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(1942)

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(80,230)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 920

MAPLE FLOORING MANUFACTURERS ASSOCIATION, W. D.
YOUNG & COMPANY, MITCHELL BROTHERS COMPANY,
ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF MICHIGAN

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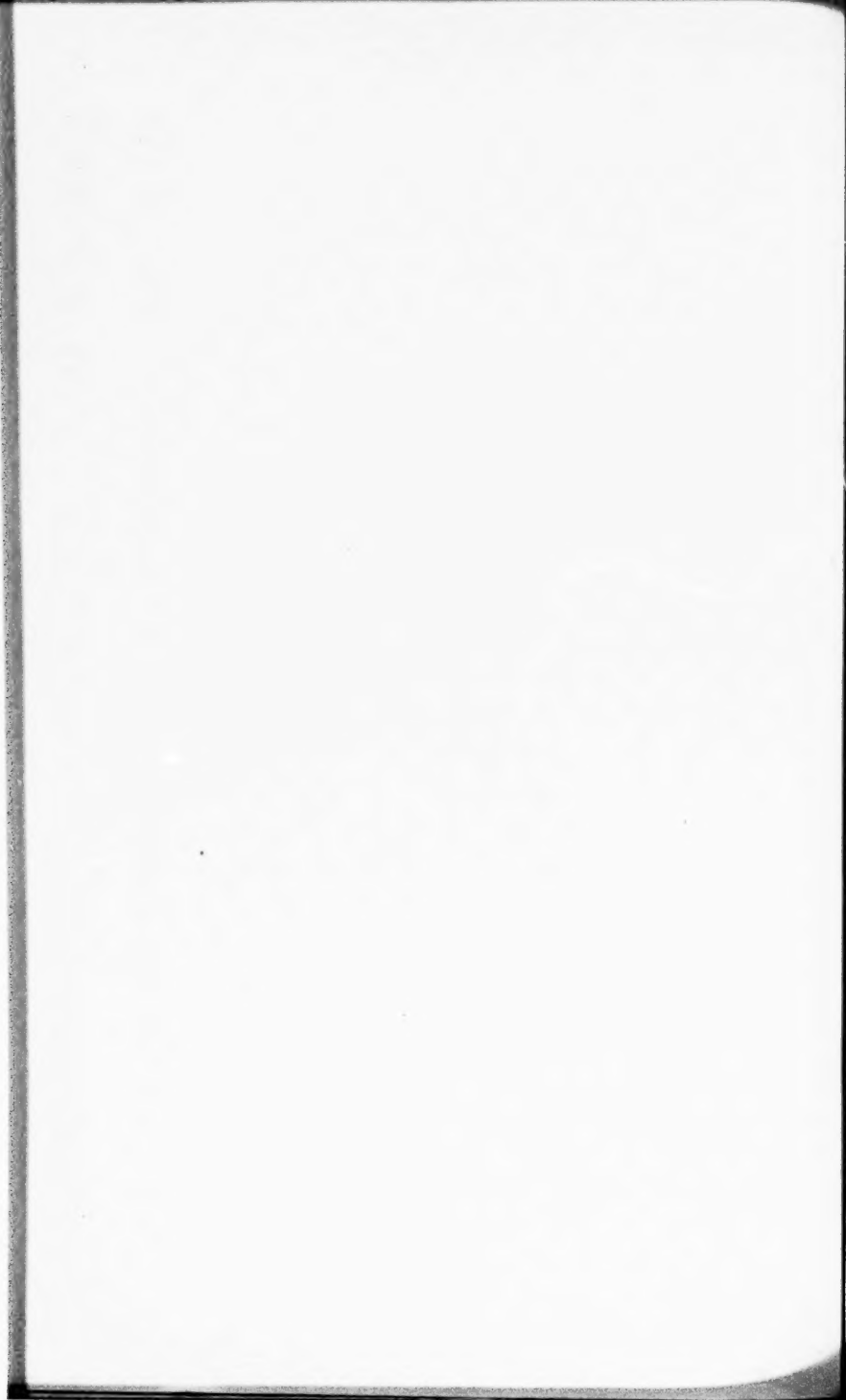
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IN THE
DISTRICT COURT OF THE UNITED STATES, WESTERN
DISTRICT OF MICHIGAN

Equity. No. —.

UNITED STATES OF AMERICA, Plaintiff,

v.

MAPLE FLOORING MANUFACTURERS ASSOCIATION et al.,
Defendants

PETITION—Filed March 5, 1923

I

The Parties

The United States of America, by its Attorney for the Western District of Michigan, acting under the direction of the Attorney General, brings this petition in equity against the Maple Flooring Manufacturers Association, an unincorporated organization, having its office at Room 1038, Stock Exchange Building, Chicago, Illinois, and against the following members, representatives of members, and employees thereof.

[fol. 2] Defendants Members of Defendant Associations

Name	State of incorporation or other description	Location of factory and principal office
W. D. Young & Company.....	Estate of W. D. Young.	Bay City, Mich.
Mitchell Brothers Company...	Michigan	Cadillac, Mich.
Wisconsin Land & Lumber Co.	Wisconsin	Hermansville, Mich.
Cobbs & Mitchell, Inc.....	Michigan	Cadillac, Mich.
I. Stephenson Co., Trustees...	Trusteeship	Wells, Mich.
Cummer-Diggins Co.....	Michigan	Cadillac, Mich.
Osgood & Blodgett Mfg. Co...	Minnesota	St. Paul, Minn.
Holt Hardwood Company.....	Wisconsin	Oconto, Wis.
Kerry & Hanson Flooring Company.	Michigan	Grayling, Mich.
East Jordan Lumber Co.....	Michigan	East Jordan, Mich.
Nichols & Cox Lumber Co....	Michigan	Grand Rapids, Mich.
Strable Lumber & Salt Co....	Michigan	Saginaw, Mich.
Foster-Latimer Lumber Co....	Wisconsin	Mellen, Wis.
West Michigan Flooring Co...	Copartnership	Manistee, Mich.
J. W. Wells Lumber Co.....	Michigan	Menominee, Mich.
Northwestern Cooperage & Lumber Co.	Michigan	Gladstone, Mich.
Flanner-Steger Land & Lum- ber Co.	Wisconsin	Blackwell, Forest Co., Wis.
Grand Rapids Trust Company, as Receiver for William Horner.	Michigan	Newberry & Reed City, Mich.
North Branch Flooring Com- pany.	Illinois	Chicago, Ill.
The Bigelow Copper Co.....	Michigan	Bay City, Mich.
Kneeland-McLurg Lumber Co.	Wisconsin	Phillips, Wis.
Oval Wood Dish Corporation.	Delaware	Tupper Lake, N. Y.

Individual Defendants

Name	Affiliation	Address
George R. Keehn.....	Maple Flooring Manufacturers Association.	Stock Exchange Bld., Chicago, Ill.
B. P. Whedon.....	W. D. Young & Company....	Bay City, Mich.
M. E. Thomas.....	Mitchell Bros. Co.....	Cadillac, Mich.
G. W. Earle.....	Wisconsin Land & Lumber Co.	Hermansville, Mich.
H. H. Shepeck.....	I. Stephenson Co., Trustees..	Wells, Mich.
J. L. Colby.....	Cummer-Diggins Co.....	Cadillac, Mich.
F. S. Blodgett.....	Osgood & Blodgett Mfg. Co..	St. Paul, Minn.
W. L. De Wit.....	Holt Hardwood Company....	Oconto, Wis.
F. R. Walsh.....	Kerry & Hanson Flooring Company.	Grayling, Mich.
J. A. Porter.....	East Jordan Lumber Company.	East Jordan, Mich.
F. E. Holland.....	Nichols & Cox Lumber Co...	Grand Rapids, Mich.
George Strable.....	Strable Lumber & Salt Co..	Saginaw, Mich.*
H. I. Latimer.....	Foster-Latimer Lumber Co..	Mellen, Wis.
[fol.3] Edwin Bolmer, W. H. Green, Mary Bolmer.	West Michigan Flooring Company.	Manistee, Mich.
A. C. Wells, H. C. Law.	J. W. Wells Lumber Company.	Menominee, Mich.
J. D. Staple.....	Northwestern Cooperage & Lumber Co.	Gladstone, Mich.
P. D. Flanner.....	Flanner-Steger Land & Lumber Co.	Blackwell, Forest Co., Wis.
T. M. Ralston.....	Grand Rapids Trust Company, Receiver for William Horner.	Newberry & Reed City, Mich.
C. A. Brand.....	North Branch Flooring Company.	Chicago, Ill.
J. E. Dewey.....	The Bigelow-Cooper Co.....	Bay City, Mich.
P. S. McClurg.....	Kneeland-McClurg Lumber Company.	Phillips, Wis.
F. M. Hedges.....	Oval Wood Dish Corporation.	Tupper Lake, N. Y.

Defendants B. P. Whedon, George R. Keehn, M. E. Thomas, and A. C. Wells are respectively the President, Secretary, Vice President, and Treasurer of the defendant Maple Flooring Manufacturers Association. Said association will be hereinafter referred to as the defendant association, the members as the defendant corporations, the officers and representatives of the members and of the defendant association as the individual defendants, and all collectively as the defendants.

II

Jurisdiction and Object

Many of the defendant corporations maintain their principal offices and have their mills for the manufacturing of flooring within this district and they there manufacture large quantities of maple, beech, and birch flooring. The defendants make sales of the flooring manufactured by them from their said offices in this district, and they thereupon ship said flooring in interstate trade

and commerce from this district into other States, to the wholesale and retail lumber dealers who have contracted for its purchase. Said sales and shipments are made pursuant to and in conformity with the restrictive practices and agreements which are hereinafter described, and said practices and agreements are enforced from the offices in this district of the individual defendants M. E. Thomas and A. C. Wells, as respectively the Vice President and the Treasurer of the defendant association.

This petition is brought under the provisions of section 4 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209), known as the Sherman Antitrust Act, to prevent and restrain the aforesaid defendants from further engaging, in this district and elsewhere in the United States, in violation of the said Act of Congress, in a combination and conspiracy to restrain the manufacture of maple, beech, and birch flooring, its transportation in interstate trade and commerce, and its sale in the course of said trade and commerce in all of the States of the United States and in the District of Columbia.

[fol. 5]

III

Description of the Industry

The defendant corporations are engaged in the business of manufacturing maple, beech, and birch flooring, which is extensively used throughout the country in the construction of residences and other buildings. Approximately half of the defendant corporations own timber lands and saw mills as well as flooring mills, and they conduct logging operations and saw the rough lumber which they use for the manufacture of flooring. The other defendant corporations purchase rough flooring lumber in the open market and manufacture the same into finished flooring. The membership of defendant association comprises practically all of the manufacturers of maple, beech, and birch flooring within the States of Michigan, Illinois, Wisconsin, and Minnesota and it represents approximately seventy per cent of the total manufacturing capacity of such flooring in the United States.

IV

The Combination and Conspiracy and Relation of Defendants Thereto

The defendant corporations, from the date each became a party to any or all of the hereinafter described contracts or Articles of Association or Minimum Price Plans of the defendant association, and during all of the time that each has been a party thereto, and the individual defendants, from the date each became a representative [fol. 6] tive to the defendant association of a member thereof, or became an officer or an employee thereof, and during all of the time

that each has been such representative, officer, or employe, have contracted, combined, and conspired with each other to eliminate all competition between the members of the defendant association in manufacturing, transporting, and selling in interstate trade and commerce the maple, beech, and birch flooring manufactured by them in the States of Minnesota, Wisconsin, Illinois, Michigan, and New York, transported therefrom, and sold in the course of interstate trade and commerce in all of the States of the United States and in the District of Columbia, in violation of Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209), known as the Sherman Antitrust Act.

V

The Means

Said combination and conspiracy was brought about and accomplished and is now being maintained in the manner and by the means now stated, viz:

(1) Association Organization and Early Activities

The defendant association has been in existence since 1895, and it was reorganized by a mutual agreement or Articles of Association entered into by the defendant corporations and by other manufacturers of flooring under date of January 1, 1913, and it has been continued in existence by other mutual agreements or Articles of [fol. 7] Association entered into by them at various dates thereafter. It is now being maintained under and in accordance with the provisions of Articles of Association dated January 1, 1922, which will be in effect until January 1, 1925. All of the defendant corporations are now parties to said Articles of Association, and through the individual defendants as their representatives they take an active part in all of the activities of the defendant association. All of the aforesaid Articles of Association have provided for the formal organization of the defendant association with headquarters at Chicago, Illinois; for the usual officers and a board of trustees to supervise and manage its activities; for a special fund or membership fee fund as a guaranty for the fulfilment of the obligations assumed by its members, and for an expense fund created and maintained by assessments levied on its members. Said Articles of Association prior to those of January 1, 1922, also established a pooling arrangement between the members of the defendant association by allotting to each member a certain percentage of the total business, by creating a general fund through payments from all members on shipments over their prescribed allotted percentages, and by providing for payments from said general fund to members shipping less than their prescribed allotments. The defendant corporations operated under this arrangement for the pooling of their

businesses continuously from January 1, 1913, until on or about March 31, 1920.

[fol. 8]

(2) Minimum Price Agreements

Under dates respectively of July 1, 1916, July 1, 1919, and January 6, 1921, the defendant corporations and the other manufacturers of flooring who were members of the defendant association on said dates, entered into mutual agreements termed "Minimum Price Bases" or "Minimum Price Plans," each of which constituted an amendment to the Articles of Association under which the defendant association was being maintained. By said minimum price plans the defendant corporations agreed to establish minimum prices for the sale of maple, beech, and birch flooring, and not to sell any such flooring below said minimum prices. Said plans specified certain elements which should be used as the basis for determining an average cost of manufacturing and selling flooring, and the average percentage of net profit which should be added to said average cost in order to establish said minimum prices. Said plans also provided that said minimum prices should be the delivered prices in the "Table of Values" in the "Association Rate Book and Index of Towns," which is hereinafter described, and specified the concessions and commissions which could be allowed and the terms of sale that should be enforced.

[fol. 9] (3) The Present Method of Establishing Minimum Prices

In and by the aforesaid Articles of Association of January 1, 1922, the defendants substituted for the aforesaid Minimum Price Plans a statement of policy to the effect that a careful consideration of the question of cost is recognized as the only scientific method of conducting the business of manufacturing and marketing maple, beech, and birch flooring, and provisions that the defendant association furnish to its members information regarding the average cost of such flooring when manufactured, sold, and delivered F. O. B. cars at the flooring plants, as determined from time to time by surveys of costs. Said agreement specifies that certain enumerated fundamental elements are to be considered as entering into and determining such average costs, and said elements are identical with those employed in accordance with the aforesaid minimum price plans for the determination of minimum prices. The elements specified as entering into costs, both by the aforesaid Minimum Price Plans and by said Articles of Association, themselves contain many items of profit. With the addition to said so-called "costs" of a percentage thereof to allow profit under said Minimum Price Plans, or to constitute "a reasonable allowance to provide for contingencies or unforeseen hazards incident to manufacturing operations," which was substituted for the item of profit by said Articles of Association, said so-called "average costs," as well as said minimum prices, in fact have [fol. 10] represented and now represent all possible elements of actual cost and also large profits to the defendant corporations.

In accordance with the aforesaid minimum price plans and with said 1922 Articles of Association, the defendants from time to time from 1913 until the present date have made surveys of costs, have determined therefrom minimum prices or so-called "average costs," and have recommended that the defendant corporations should not sell flooring at prices below said minimum prices or below said so-called "average costs." The defendant corporations have at all times during said period accepted and acted upon said recommendations, and have concertedly established and maintained as the basis of their individual selling prices, the minimum prices or so-called average costs determined as heretofore described, and by concertedly maintaining the same, and also the uniform terms of sale, the uniform rules with regard to allowing cash discounts, the uniform commissions, and the uniform rules regarding the allowance of commissions and concessions, which were established by and in accordance with said Minimum Price Plans, they have always maintained during said period, and they still maintain, a practical uniformity between themselves of net f. o. b. selling prices.

(4) Freight Rate Books

In connection with the aforesaid determinations of minimum prices or of so-called average costs, the defendant association has [fol. 11] from time to time prepared and distributed to the defendant corporations so-called freight rate books. Said books contain tables of the freight rates from Cadillac, Michigan, to many cities and towns in all of the States of the United States. They also contain an average cost chart showing the average costs f. o. b. cars of the principal items of maple flooring in the three established grades; tables of differentials for the determination of average costs of all other kinds of maple, beech, and birch flooring by additions to or subtractions from said average cost chart; statements of the extra charges for special grades, for special sizes, and for special lengths; statements of the terms of sale and of the rules for allowing cash discounts; and delivered cost charts showing the average so-called cost of any item of flooring, including the freight from Cadillac, Michigan, when delivered at any destination. By means of said freight rate books, the defendants from 1913 continuously until the present date have been enabled to determine the delivered "minimum price" for any item of maple, beech, or birch flooring at any destination in the United States, in accordance with the aforesaid Minimum Price Plans, or the so-called "average cost" thereof in accordance with the 1922 Articles of Association. The defendants agreed to adopt and have concertedly adopted Cadillac, Michigan, as an arbitrary freight basing point from which they compute and charge freight, regardless of the point from which each may actually ship flooring. They also agreed to adopt, and have concertedly [fol. 12] adopted and used, and they still continue to use, the minimum prices or so-called average costs stated in said Freight Rate Books, as the basis of their individual selling prices, and by concertedly maintaining the same and also the uniform charges and

practices heretofore described, they have always maintained, and they still maintain, a practical uniformity between themselves of net delivered prices.

(5) Open Price Reporting Plan

The defendants adopted and for many years have operated under a so-called open price reporting plan, or open competition plan, and said plan is included in the aforesaid Articles of Association of January 1, 1922. In accordance therewith the defendant corporations render the following reports to defendant George R. Kechn, as Secretary of the defendant association:

(a) Monthly report of stocks on hand of Maple, Beech, and Birch flooring at the end of the previous month.

(b) Monthly report of unfilled orders on hand for Maple, Beech, and Birch flooring at the end of the previous month.

(c) Monthly report of the amount in feet of shipments made during the previous month of all kinds of Maple, Beech, and Birch flooring for use within the United States, except Maple, Beech, and Birch flooring purchased from other members of the defendant association.

(d) Monthly report of production of Maple, Beech, and Birch flooring during the previous month.

[fol. 13] (e) Report of new orders booked for Maple, Beech, and Birch flooring during the previous month.

(f) Monthly report of average prices realized F. O. B. flooring plant, after deducting freight, for 13/16" x 3 1/2" face clear No. 1 and factory Maple flooring, standard grades and lengths, sold during the previous month.

(g) Weekly report of all sales of flooring, stating for each individual sale the quantity and grade of flooring sold, the delivered price sold at, the average freight rate to destination of shipment, and the commissions paid, if any.

(h) Quarterly report of manufacturing and marketing costs per thousand feet of flooring.

Said defendant George R. Kechn, as secretary of the defendant association, receives and compiles the aforesaid reports and prepares therefrom and distributes to the defendant corporations the following statistical reports:

(a) Monthly stock conditions and barometer report, containing statistics and graphical representations comparing the combined figures of the same reporting members for the preceding month and for the same month of the preceding year as to: stocks on hand, unfilled orders, shipments, production, new business booked, and average values; and also as to each of these a statement of the per-

centage of increase or decrease for the preceding month in comparison with the comparable figures for the preceding year.

(b) Monthly report of Maple, Beech, and *and* Birch flooring statistics [fol. 14] for the preceding month compared with the same month of the preceding year, showing for each member individually the stock on hand and unfilled orders as of the last of the preceding month and of the same month of the preceding year; the shipments, production, new orders, and stock changes of each member for the preceding month in comparison with the same month of the preceding year, and the total of these statistics for all of the members and the percentages of increase or decrease in comparison with similar statistics for the same month of the preceding year.

(c) Monthly report of average prices realized for the preceding month in comparison with the same month of the preceding year, showing the average prices after deducting freight and commissions on new orders booked for three representative items of maple flooring; the average prices realized being given for all of the members, for each member individually, and for seven geographical groups of members.

(d) Monthly report showing for each kind, grade, and size of flooring the amount on hand the first of the preceding month, the unfilled orders on hand on the same day, and the surplus stocks.

(e) Weekly report of sales made during the preceding week, showing in consecutive columns from left to right: the date of the sale, the quantity of lumber sold, the description of the lumber sold (dimension and grade), the delivered price, the average freight rate, the commissions paid, if any, and the index number of the mill making the sale.

[fol. 15] (f) Quarterly "Survey of Costs," showing the average manufacturing and marketing cost per thousand feet of flooring.

(g) Quarterly report of average costs, showing the approximate relative average costs of flooring products of the standard sizes and grades F. O. B. cars at the flooring mills, based on the average cost of rough flooring lumber F. O. B. cars at flooring mills, the average manufacturing and marketing costs, and test runs indicating the proportions of the grades and faces of flooring produced from the lumber used.

(h) "Trend of Average Sales," recently inaugurated and not heretofore issued at regular intervals, showing for the weeks ending August 5, 1922, and thereafter until October 14, 1922, the averages of delivered prices, the averages of average freight rates, the average cost of freight, and the averages of prices realized F. O. B. Michigan and Wisconsin mills, of one item of Maple flooring in standard grades and lengths.

(i) Semiannual report containing statistics similar to those described heretofore in subparagraphs (a), (b), (c), and (d) of this

paragraph, but covering the preceding half of the calendar year and contrasted with comparable statistics for the same half of the preceding year.

(j) Annual report, containing statistics similar to those described heretofore in subparagraphs (a), (b), (c) and (d) of this paragraph, but covering the preceding calendar year and contrasted with comparable statistics for the next preceding year.

Each defendant knows the index number of each of the defendant corporations, and is therefore fully advised as to every detail, excepting the name of the purchaser and the destination of the shipment, of every sale of flooring made by every member of the defendant association. The aforesaid monthly statistical reports are published in certain trade papers, but at such times that the defendants have the information contained therein considerably earlier than does the general public. The distribution of the weekly detailed information as to sales and prices is strictly confined to the defendant corporations.

(6) Association Meetings

Prior to 1922, defendant George R. Keehn, as secretary of the defendant association, generally transmitted the aforesaid statistical reports of the open competition plan to the defendant corporations accompanied with his comments interpreting the same, and with statements and comments regarding general conditions in the industry. Since 1921, the defendants have substituted for said written comments and statements the system of holding frequent meetings, and they now assemble monthly at association meetings and discuss the prices and the supplies of rough flooring lumber, the costs of manufacturing and selling flooring, the conditions of supply and [fol. 17] demand in the flooring industry, and trade conditions and the flooring situation in general, and especially as reflected by the statistical reports of the defendant association. In short, they exchange with each other at said meetings, all the information which they have, and all the experiences which they have had in their several businesses, which can be of general interest to them as manufacturers of maple, beech, or birch flooring.

For use at the aforesaid monthly meetings defendant George R. Keehn secures from the defendant corporations, on blank forms distributed by him, information as to orders, production, and shipments for the portion of each month preceding its monthly meeting. These data are compiled and are discussed at said meetings, and the defendants forecast therefrom the probable amounts of orders, of shipments, and of production for the entire month, and then compare the same with similar data for preceding months. The Committee on Coast Surveys of the defendant association also frequently reports at said meetings respecting the supplies of rough flooring lumber and gives its opinion as to the actual market value of such lumber and as to the average cost of manufacturing and marketing flooring.

(7) Uniform Trade-mark and Grading Rules

The defendant association has adopted a trade-mark, which is used by the defendant corporations under and in accordance with [fol. 18] the terms of uniform trade-mark license agreements which have been entered into between each of them and said association. Said agreements grant each of said defendant corporations the right to use the uniform association trade-mark, followed by the index number of the individual corporation, so long as each continues a member in good standing of the defendant association, and provide that each member so licensed shall maintain the standard grades of flooring established by the defendant association and shall be subject to inspection by the association inspectors for the purpose of seeing that said standard grades are properly maintained. Standard grades and also detailed grading rules have been adopted and copyrighted by the defendant association, and they are now being uniformly and concertedly maintained by the defendants.

(8) Association Advertising

The defendant association has for a number of years conducted, and is still conducting, an extensive advertising campaign for the purpose of promoting the use of maple, beech, and birch flooring and of emphasizing that purchasers should secure flooring bearing the aforesaid association trade-mark. Said advertisements carry the name of the defendant association alone, and not the names of its members, and they state that flooring bearing the association trade-mark is standardized and guaranteed by the defendant association. Many of said advertisements contain price propaganda urging [fol. 19] purchases of flooring at the time of the publication of said advertisements on the ground of the price being fully adjusted to then existing conditions. Inquiries received in answer to said advertisements are bulletined by the defendant association to the defendant corporations.

VI

The Results

The aforesaid surveys or reports of average costs and the tables of delivered values constitute a uniform basis on which the defendants establish their individual selling prices irrespective of their individual costs; and, together with the weekly report giving detailed information as to every sale made by every defendant, with the uniform use of the freight-basing point, and with the maintenance of the uniform trade practices, they have practically eliminated all *price* competition between the defendants. The use of the uniform trade-mark and the character of the advertising put out by the defendant association intensify the tendency to establish and maintain uniform prices and also practically eliminate all competition between the defendants based on the quality of their respective products.

The elaborate information furnished the defendants by the re-

porting system of the defendant association enables them to forecast the trend of conditions in the industry and the course of prices, [fol. 20] gives them an unfair advantage over the general public, and prevents the free operation of the economic law of supply and demand. The discussions at the meetings intensify this condition, and tend to cause, and do cause, the substitution on the part of the defendants of uniform and concerted action for individual action. The reporting plan and the discussions at the monthly meetings also tend to accelerate upward movements of prices, and to retard downward movements, whenever either may be naturally caused by economic conditions.

Summarily stated, the unlawful combination and conspiracy hereinbefore described has resulted in eliminating the competition to which the public is entitled, which the law contemplates, and which, but for said combination and conspiracy, would exist between defendant corporations in the manufacture and sale of maple, beech, and birch flooring, and constitutes an unreasonable and unlawful restraint of interstate trade and commerce within the meaning of the Sherman Antitrust Act.

VII

Prayer

Wherefore petitioner prays:

1. That writs of subpoena issue, directed to each and every of the defendants, commanding them to appear herein and answer, but not under oath (answer under oath being hereby expressly waived), [fol. 21] the allegations contained in this petition, and to abide by and perform such orders and decrees as the court may make in the premises.

2. That the court, upon final hearing of this cause, adjudge and decree the Maple Flooring Manufacturers Association in and of itself to be an unlawful instrumentality organized, operated, and maintained solely for the purpose of carrying into effect the unlawful combination and conspiracy in restraint of interstate trade and commerce in Maple, Beech, and Birch flooring, hereinbefore described, in violation of Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209).

3. That the court, upon final hearing of this cause, adjudge and decree that the defendants have engaged in a combination and conspiracy in restraint of interstate trade and commerce in Maple, Beech, and Birch flooring in the manner and by the means hereinbefore described, in violation of the act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209), and that they and their officers, directors, and agents be perpetually enjoined, individually and collectively, from further engaging in, carrying out, or maintaining the said combination and conspiracy, or any other of like

character and effect, and particularly from further employing any or all of the above-described means of carrying out said combination and conspiracy.

[fol. 22] 4. That plaintiff have such other, further, and general relief as the nature of the case may require and the court may deem proper.

United States of America, by Edward J. Bowman, United States Attorney for the Western District of Michigan. H. M. Daugherty, Attorney General. A. T. Seymour, Assistant to the Attorney General. C. Stanley Thompson, Special Assistant to the Attorney General.

March, 1923.

[fol. 23] DISTRICT COURT OF THE UNITED STATES

[Title omitted]

APPEARANCE—Filed March 26, 1923

We hereby enter the appearance of Maple Flooring Manufacturers Association, an unincorporated organization, W. D. Young & Company, a corporation, Mitchell Brothers Company, a corporation, Wisconsin Land & Lumber Co., a corporation, Cobbs & Mitchell, Inc., a corporation, I. Stephenson Co. a corporation, Cumner-Diggins Co., a corporation, Osgood & Blodgett Mfg. Co., a corporation, Holt Hardware Company, a corporation, Kerry & Hanson Flooring Company, a corporation, East Jordan Lumber Co., a corporation, Nichols & Cox Lumber Co., a corporation, Strable Lumber & Salt Co., a corporation, Foster-Latimer Lumber Co., a corporation, West Michigan Flooring Co., a corporation, J. W. Wells Lumber Co., a corporation, Northwestern Cooperage & Lumber Co., a corporation, Flanner-Steger Land & Lumber Co., a corporation, Grand Rapids Trust Company, as Receiver for William Horner, North Branch Flooring Company, a corporation, The Bigelow Copper Co., a corporation, Kneeland-McClurg Lumber Co., a corporation, Oval Wood Dish Corporation, George R. Keehn, B. P. Whedon, M. E. Thomas, G. W. Earle, H. H. Shepeck, J. L. Colby, F. S. Blodgett, W. L. De Wit, F. R. Walsh, J. A. Porter, F. E. Holland, George Strable, H. I. Latimer, [fol. 24] Edwin Bolmer, W. H. Green, Mary Bolmer, A. C. Wells, H. C. Law, J. D. Staple, P. D. Flanner, T. M. Ralston, C. A. Brand, J. E. Dewey, P. S. McClurg, and F. M. Hedges, defendants herein, and our own appearance as their solicitors.

Neuman, Poppenhusen, Stern & Johnston, 11 So. La Salle St., Chicago, Ill. Travis, Merrick, Warner & Johnson, Solicitors for said Defendants.

Dated Grand Rapids, Michigan, March 26th, 1923.

[fol. 25] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION—Filed March 26, 1923

It is hereby stipulated by and between the plaintiff and the defendants, through and by their respective attorneys, that the time within which the defendants and each of them may plead by answer or motion, is hereby extended to and including May 1, 1923.

Dated March 26, 1923.

Edward J. Bowman, Attorney for Plaintiff. Travis, Merrick,
Warner & Johnson, Attorneys for Defendants.

[fol. 26] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—Filed March 26, 1923

On stipulation of the parties, and for good cause shown, it is now ordered that the defendants and each of them have and they are given to and including May 1, 1923, within which to plead by answer or motion.

Dated March 26, 1923.

C. W. Sessions, United States District Judge.

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed May 26, 1923

I

And now come all the defendants in the above entitled cause and each of them and move the court to dismiss the petition filed in this cause because said petition does not state any matter of equity entitling plaintiff to the relief prayed for, nor are the facts as stated in said petition sufficient to constitute a valid cause of action in equity or to entitle plaintiff to any relief against these defendants or any of them.

II

Defendants and each of them move the court to dismiss Paragraph IV of said petition, which reads as follows:

"The defendant corporations, from the date each became a party to any or all of the hereinafter described contracts or Articles of Association or Minimum Price Plans of the defendant association, and during all of the time that each has been a party thereto, and the individual defendants, from the date each became a representative to the defendant association of a member thereof, or became an officer or an employee thereof, and during all of the time that each has been such representative, officer, or employee, have contracted, combined, and conspired with each other to eliminate all competition between the members of the defendant association in manufacturing, transporting, and selling in interstate trade and commerce the maple, beech, and birch flooring manufactured by them in the States of Minnesota, Wisconsin, Illinois, Michigan, and New York, [fol. 28] transported therefrom, and sold in the course of interstate trade and commerce in all of the States of the United States and in the District of Columbia, in violation of Section 1 of the Act of Congress of July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies' (26 Stat. 209,) known as the Sherman Antitrust Act."

for the reason that it is indefinite and uncertain, in that the plaintiff does not aver when the defendants, or any of them, became parties to any of the contracts, articles of association, or minimum price plans therein mentioned, nor during what period of time the defendants, or any of them, were parties thereto, nor when the individual defendants became representatives to the defendant association of members thereof, nor when any of the individual defendants became officers or employees of the defendant association, nor when the defendants, or any of them contracted, combined or conspired to eliminate all competition between the members of the defendant association as alleged in said Paragraph IV.

III

Defendants and each of them move the court to dismiss that part of Section (1) of Paragraph V of said petition which reads as follows:

"The defendant association has been in existence since 1895, and it was reorganized by a mutual agreement or Articles of Association entered into by the defendant corporations and by other manufacturers of flooring under date of January 1, 1913, and it has been continued in existence by other mutual agreements or Articles of Association entered into by them at various dates thereafter.
* * * Said Articles of Association prior to those of January 1, 1922, also established a pooling arrangement between the members

of the defendant association by allotting to each member a certain percentage of the total business, by creating a general fund through payments from all members on shipments over their prescribed allotted percentages and by providing for payments from said general fund to members shipping less than their prescribed allotments. The defendant corporations operated under this arrangement for the pooling of their businesses continuously from January 1, 1913, until on or about March 31, 1920."

[fol. 29] for the following reasons:

(1) That said portion of Section (1) of paragraph V above quoted wherein it is alleged that the defendant association has been in existence since 1895 is repugnant to the averment in Section (1) of Paragraph V of said petition that the defendant association is now being maintained under and in accordance with the provisions of Articles of Association dated January 1, 1922, which will be in effect until January 1, 1925.

(2) That it appears in and by said bill that the Maple Flooring Manufacturers' Association is an unincorporated organization and that as a matter of law came into existence on January 1, 1922, and that it is a separate and distinct organization and entirely different from any previous association having the same name.

(3) That what was done by members of any previous association or associations, or by the defendants, or any of them previous to January 1, 1922, is irrelevant and immaterial as a matter of law, in that said petition shows that on January 1, 1922, the Maple Flooring Manufacturers' Association came into existence for the first time and that the Articles of Association prior to January 1, 1922, had expired, and that the practices mentioned in that portion of Paragraph V above quoted ceased on or about March 31, 1920.

(4) That it is not charged in and by said petition that the matters and things done by the said defendants at any time were so done with an unlawful purpose or intent; that that portion of Section (1) of Paragraph V of the petition above set forth is a mere statement of evidence and contrary to Rule 25 of the Rules of Practice in Equity, and that upon a hearing of this cause such evidence would be irrelevant, incompetent and immaterial, for the reason that the plaintiff does not charge the defendants, or any of them, with an unlawful purpose or intent.

IV

Defendants and each of them move the court to dismiss Section (2) of Paragraph V of said petition, which reads as follows:

"Under dates respectively of July 1, 1916, July 1, 1919, and January 6, 1921, the defendant corporations and the other manufacturers of flooring who were members of the defendant association on

said dates, entered into mutual agreements termed 'Minimum Price Bases' or 'Minimum Price Plans,' each of which constituted an amendment to the Articles of Association under which the defendant association was being maintained. By said minimum price plans the defendant corporations agreed to establish minimum prices for the sale of maple, beech, and birch flooring, and not to sell any such flooring below said minimum prices. Said plans specified certain elements which should be used as the basis for determining an average cost of manufacturing and selling flooring, and the average percentage of net profit which should be added to said average cost in order to establish said minimum prices. Said plans also provided that said minimum prices should be the delivered prices in the 'Table of Values' in the 'Association Rate Book and Index of Towns,' which is hereinafter described, and specified the concessions and commissions which could be allowed and the terms of sale that should be enforced."

for the following reasons:

(1) That it appears in and by Section (3) of Paragraph V of said petition, that the minimum price agreements mentioned in said portion of Paragraph V above quoted, were discontinued on or about January 1st, 1922.

(2) That the said petition does not charge the defendants or any of them, with an unlawful intent or purpose either in their present or in their alleged past operations. Neither is it alleged in said petition that there is any likelihood or danger of the defendants' resuming the price agreements mentioned in Section (2) of Paragraph V above quoted.

[fol. 31] (3) That the present Maple Flooring Manufacturers' Association did not come into existence until January 1st, 1922, as shown in Sections (1) and (3) of Paragraph V of said petition.

(4) That said Section (2) of Paragraph V of said petition is indefinite and uncertain, in that it does not set forth any of the agreements therein mentioned, nor the elements which it is alleged were used as a basis for determining an average cost of flooring, nor the alleged percentage of profit, nor the concessions and commissions therein mentioned.

(5) That it is not alleged the flooring therein mentioned was maple, birch or beech flooring, nor that it was sold in interstate commerce by the defendants, or any of them, nor that the minimum prices therein mentioned were unreasonable or did not represent the fair market value of said flooring, or that any of said agreements were ever acted upon by the defendants or any of them.

V

The defendants and each of them, move the court to dismiss that portion of Section (3) of Paragraph V of said petition with reads as follows:

"In and by the aforesaid Articles of Association of January 1, 1923, the defendants substituted for the aforesaid Minimum Price Plans a statement of policy to the effect that a careful consideration of the question of cost is recognized as the only scientific method of conducting the business of manufacturing and marketing maple, beech, and birch flooring, and provisions that the defendant association furnish to its members information regarding the average cost of such flooring when manufactured, sold, and delivered F. O. B. cars at the flooring plants, as determined from time to time by surveys of costs."

for the following reasons:

[fol. 32] (1) That it is indefinite and uncertain, in that a copy of the Articles of Association is not set forth therein, neither is one attached to said petition, and the averment above mentioned is a conclusion.

VI

The defendants and each of them move the court to dismiss that portion of Section (3) of Paragraph V of said bill which reads as follows:

"Said agreement specifies that certain enumerated fundamental elements are to be considered as entering into and determining such average costs, and said elements are identical with those employed in accordance with the aforesaid minimum price plans for the determination of minimum prices."

for the reason that it is indefinite and uncertain in that the fundamental elements enumerated in said alleged agreement are not set forth.

VII

The defendants, and each of them, move the court to dismiss that portion of Section (3) of Paragraph V of said petition which reads as follows:

"The elements specified of entering into costs, both by the aforesaid Minimum Price Plans and by said Articles of Association, themselves contain many items of profit."

for the reasons:

- (1) That it is a conclusion.
- (2) That it is not alleged what the items of profit were.

VIII

The defendants, and each of them, move the court to dismiss that portion of Section (3) of Paragraph V of said petition which reads as follows:

"With the addition to said so-called 'costs' of a percentage thereof to allow profit under said Minimum Price Plans, or to constitute 'a reasonable allowance to provide for contingencies or unforeseen hazards incident to manufacturing operations,' which was substituted for the item of profit by said Articles of Association, said so-called 'average costs,' as well as said minimum prices, in fact have rep-[fol. 33] resented and now represent all possible elements of actual cost and also large profits to the defendant corporations."

for the reasons:

- (1) That it is a conclusion.
- (2) That it is not averred what percentage was added in order to provide for contingencies, etc.
- (3) That it is not stated wherein the average costs and the alleged percentage represented 'large profits,' neither is it averred that the 'large profits' were unreasonable.

IX

The defendants, and each of them, move the court to dismiss that portion of Section (3) of Paragraph V of said petition which reads as follows:

"In accordance with the aforesaid minimum price plans and with said 1922 Articles of Association, the defendants from time to time from 1913 until the present date have made surveys of costs, have determined therefrom minimum prices or so-called 'average costs,' and have recommended that the defendant corporations should not sell flooring at prices below said minimum prices or below said so-called 'average costs.' The defendant corporations have at all times during said period accepted and acted upon said recommendations, and have concertedly established and maintained as the basis of their individual selling prices, the minimum prices or so-called average costs determined as heretofore described, and by concertedly maintaining the same, and also the uniform terms of sale, the uniform rules with regard to allowing cash discounts, the uniform commissions, and the uniform rules regarding the allowance of commissions and concessions, which were established by and in accordance with said Minimum Price Plans, they have always maintained during said period, and they still maintain, a practical uniformity between themselves of net f. o. b. selling prices."

for the reasons:

- (1) That it is not alleged that the surveys of costs, or the minimum prices or average costs covered maple, beech or birch flooring, or any other flooring sold in interstate commerce.

[fol. 34] (2) That it is not alleged that the alleged recommendations related to maple, beech or birch flooring, or any other article of interstate commerce.

(3) That mere recommendations not to sell below average costs do not violate the law.

(4) That the averment that the "defendant corporations" accepted and acted upon said recommendation charges no violation of Section 1 of the Anti-Trust Act.

(5) That it appears in and by said portion of Section (3) of Paragraph V above quoted that the several defendants merely took the average costs into consideration in determining their individual selling prices, and that such prices were fixed by each defendant corporation separately.

(6) That it is not alleged that there ever was or now is "a practical uniformity" of "net f. o. b. selling prices" of maple, birch or beech flooring or any other article of interstate commerce.

(7) It is not alleged that the prices charged by the defendant corporations or any of them were or are extortionate or unreasonable, or that competitors, wholesale or retail dealers of the general public have been in any wise damaged by reason of the matters or things complained of.

(8) Said Section (3) of Paragraph V of said petition above quoted is indefinite and uncertain, in that neither the alleged "uniform terms of sale" nor the alleged uniform rules regarding cash discounts, nor the alleged uniform commissions, nor the alleged uniform rules regarding the allowance of commissions and concessions are specified or set forth.

[fol. 35] (9) Said Section (3) of Paragraph V above quoted is also repugnant to the first sentence of Section (3) of Paragraph V of said petition wherein it is alleged that in and by the Articles of Association of January 1, 1922, the defendants abandoned the Minimum Price Plans, of which the **uniform rules mentioned in the** preceding paragraph of this motion are alleged by plaintiff to have been a part.

(10) That portion of Section (3) of Paragraph V of said petition above quoted is also obnoxious to the rules of good pleading in that the plaintiff therein intermingles charges of past acts under previous articles which said petition shows have expired and charges of past practices which the petition shows have been abandoned, with charges of acts under present articles. In justice to the several defendants and to clearness the plaintiff should be required to separate the matters above mentioned.

(11) That the allegation that the defendant corporations "have concertedly established and maintained as the basis of their individual selling prices, the minimum prices or so-called average costs" is indefinite, uncertain, ambiguous, contradictory and meaningless. The plaintiff should be compelled to specify whether the defendants or any of them sold maple, beech or birch flooring at the prices specified in said recommendations, or above said prices,

or below said prices, and the method by which the defendants concertedly established and maintained said minimum price or so-called average costs, or otherwise used the same in fixing the individual selling prices.

X

The defendants, and each of them, move the court to dismiss Section (4) of Paragraph V of said petition, which reads as follows:

[fol. 36] "In connection with the aforesaid determinations of minimum prices or of so-called average costs, the defendant association has from time to time prepared and distributed to the defendant corporations so-called freight rate books. Said books contain tables of the freight rates from Cadillac, Michigan, to many cities and towns in all of the States of the United States. They also contain an average cost chart showing the average costs f. o. b. cars of the principal items of maple flooring in the three established grades; tables of differentials for the determination of average costs of all other kinds of maple, beech, and birch flooring by additions to or subtractions from said average cost chart; statements of the extra charges for special grades, for special sizes, and for special lengths; statements of the terms of sale and of the rules for allowing cash discounts; and delivered cost charts showing the average so-called cost of any item of flooring, including the freight from Cadillac, Michigan, when delivered at any destination. By means of said freight rate books, the defendants from 1913 continuously until the present date have been enabled to determine the delivered 'minimum price' for any item of maple, beech, or birch flooring at any destination in the United States, in accordance with the aforesaid Minimum Price Plans, or the so-called 'Average cost' thereof in accordance with the 1922 Articles of Association. The defendants agreed to adopt and have concertedly adopted Cadillac, Michigan, as an arbitrary freight basing point from which they compute and charge freight, regardless of the point from which each may actually ship flooring. They also agreed to adopt, and have concertedly adopted and used, and they still continue to use, the minimum prices or so-called average costs stated in said Freight Rate Books, as the basis of their individual selling prices, and by concertedly maintaining the same and also the uniform charges and practices heretofore described, they have always maintained, and they still maintain, a practical uniformity between themselves of net delivered prices."

for the reasons:

(1) That it is not alleged that the alleged "practical uniformity" of "net delivered prices" relates to maple, beech or birch flooring or to any other article of interstate commerce.

(2) That the allegation that the defendants "use the minimum prices or so-called average costs stated in said Freight Rate Books, as the basis of their individual selling prices" is indefinite, uncertain, contradictory and meaningless.

[fol. 37]

XI

Defendants and each of them move the court to dismiss Section (5) of Paragraph V of said petition which reads as follows:

"The defendants adopted and for many years have operated under a so-called open price reporting plan, or open competition plan, and said plan is included in the aforesaid Articles of Association of January 1, 1922. In accordance therewith the defendant corporations render the following reports to defendant George R. Keehn, as Secretary of the defendant association:

(a) Monthly reports of stocks on hand of Maple, Beech, and Birch flooring at the end of the previous month.

(b) Monthly report of unfilled orders on hand for Maple, Beech and Birch flooring at the end of the previous month.

(c) Monthly report of the amount in feet of shipments made during the previous month of all kinds of Maple, Beech and Birch flooring for use within the United States, except Maple, Beech, and Birch flooring purchased from other members of the defendant association.

(d) Monthly report of production of Maple, Beech and Birch flooring during the previous month.

(e) Report of new orders booked for Maple, Beech and Birch flooring during the previous month.

(f) Monthly report of average prices realized F. O. B. flooring plant, after deducting freight, for 13/16" x 3 1/2" face clear No. 1 and factory, Maple flooring, standard grades and lengths, sold during the previous month.

(g) Weekly report of all sales of flooring, stating for each individual sale the quantity and grade of flooring sold, the delivered price sold at, the average freight rate to destination of shipment, and the commissions paid, if any.

(h) Quarterly report of manufacturing and marketing costs per thousand feet of flooring.

Said defendant George R. Keehn, as Secretary of the defendant association, receives and compiles the aforesaid reports and prepares therefrom and distributes to the defendant corporations the following statistical reports:

[fol. 38] (a) Monthly stock conditions and barometer reports, containing statistics and graphical representations comparing the combined figures of the same reporting members for the preceding month and for the same month of the preceding year as to: stocks on hand, unfilled orders, shipments, production, new business booked, and average values; and also as to each of these a statement of the percentage of increase or decrease for the preceding month in comparison with the comparable figures for the preceding year.

(b) Monthly report of Maple, Beech and Birch flooring statistics for the preceding month compared with the same month of the preceding year, showing for each member individually the stock on hand and unfilled orders as of the last of the preceding month and of the same month of the preceding year; the shipments, production, new orders, and stock changes of each member for the preceding month in comparison with the same month of the preceding year, and the total of these statistics for all of the members and the percentages of increase or decrease in comparison with similar statistics for the same month of the preceding year.

(c) Monthly report of average prices realized for the preceding month in comparison with the same month of the preceding year, showing the average prices after deducting freight and commissions on new orders booked for three representative items of maple flooring; the average prices realized being given for all of the members, for each member individually, and for seven geographical groups of members.

(d) Monthly report showing for each kind, grade, and size of flooring the amount on hand the first of the preceding month, the unfilled orders on hand on the same day, and the surplus stocks.

(e) Weekly report of sales made during the preceding week, showing in consecutive columns from left to right: the date of the sale, the quantity of lumber sold, the description of the lumber sold (dimensions and grade), the delivered price, the average freight rate, the commissions paid, if any, and the index number of the mill making the sale.

(f) Quarterly 'Survey of Costs,' showing the average manufacturing and marketing cost per thousand feet of flooring.

(g) Quarterly report of average costs, showing the approximate relative average costs of floor-products of the standard sizes and grades F. O. B. cars at the flooring mills, based on the average cost of rough flooring lumber F. O. B. cars at flooring mills, the average manufacturing and marketing costs, the test runs indicating the proportions of the grades and faces of flooring produced from the lumber used.

[fol. 39] (h) 'Trend of Average Sales,' recently inaugurated and not heretofore issued at regular intervals, showing for the weeks ending August 5, 1922, and thereafter until October 14, 1922, the averages of delivered prices, the averages of average freight rates, the average cost of freight, and the averages of prices realized F. O. B. Michigan and Wisconsin mills, of one item of Maple Flooring in standard grades and lengths.

(i) Semiannual report containing statistics similar to those described heretofore in subparagraphs (a), (b), (c) and (d) of this paragraph, but covering the preceding half of the calendar year and contrasted with comparable statistics for the same half of the preceding year.

(j) Annual report, containing statistics similar to those described heretofore in subparagraphs (a), (b), (c) and (d) of this paragraph, but covering the preceding calendar year and contrasted with comparable statistics for the next preceding year.

Each defendant knows the index number of each of the defendant corporations, and is therefore fully advised as to every detail, excepting the name of the purchaser and the destination of the shipment, of every sale of flooring made by every member of the defendant association. The aforesaid monthly statistical reports are published in certain trade papers, but at such times that the defendants have the information contained therein considerably earlier than does the general public. The distribution of the weekly detailed information as to sales and prices is strictly confined to the defendant corporation."

for the following reasons:

(1) That it appears in and by said Section (5) above quoted that the trade statistics therein mentioned relate wholly to past transactions; that the collection and distribution of the statistics mentioned in Section (5) Paragraph V above quoted are not unlawful per se and that it is not alleged in and by said petition that such statistics were either collected or distributed as a part of a scheme or with the intent to limit production, increase or maintain prices or to restrain interstate trade or commerce.

(2) That said Section (5) of Paragraph V of the petition above quoted is indefinite and uncertain in that it is not stated at what times or in what papers the monthly reports are published by the defendants.

[fol. 39½.] (3) That Section (5) of Paragraph V above quoted is also indefinite and uncertain in that the averments that "the aforesaid monthly statistical reports are published in certain trade papers, but at such times that the defendants have the information contained therein considerably earlier than does the general public" is a conclusion.

XII

Defendants and each of them move the court to dismiss Section (6) of Paragraph V of said petition, which reads as follows:

"Prior to 1922, defendant George B. Kechn, as Secretary of the defendant association, generally transmitted the aforesaid statistical reports of the open competition plan to the defendant corporations accompanied with his comments interpreting the same, and with statements and comments regarding general conditions in the industry. Since 1921, the defendants have substituted for said written comments and statements the system of holding frequent meetings, and they now assemble monthly at association meetings and discuss the prices and the supplies of rough flooring lumber, the costs of manufacturing and selling flooring, the conditions of supply and de-

mand in the flooring industry, and trade conditions and the flooring situation in general, and especially as reflected by the statistical reports of the defendant association. In short, they exchange with each other at said meetings, all the information which they have, and all the experiences which they have had in their several businesses, which can be of general interest to them as manufacturers of maple, beech, or birch flooring.

"For use at the aforesaid monthly meetings defendant George R. Keehn secures from the defendant corporations, on blank forms distributed by him, information as to orders, production, and shipments for the portion of each month preceding its monthly meeting. These data are compiled and are discussed at said meetings, and the defendants forecast therefrom the probable amounts of orders, of shipments, and of production for the entire month, and then compare the same with similar data for preceding months. The Committee on Coast Surveys of the defendant association also frequently reports at said meetings respecting the supplies of rough flooring lumber and gives its opinion as to the actual market value of such lumber and as to the average cost of manufacturing and marketing flooring."

for the reason that it is not alleged therein that the meetings therein [fol. 40] mentioned were held for an unlawful purpose, or as a part of a scheme to limit production, to fix or enhance prices or to restrain interstate commerce, or that at any of such meetings there was any agreement, express or implied, made or entered into by defendants to do any of the things above mentioned.

Wherefore the defendants and each of them pray the judgment of this Court whether they or any of them shall further answer and that they and each of them be dismissed with their and each of their costs.

Neuman, Popenhusen, Stern & Johnston, Travis, Merrick,
Warner & Johnson, Solicitors for Defendants.

[fol. 41]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION TO DISMISS—June 25, 1923

The motion of said defendants to dismiss the plaintiff's petition in this cause came duly on to be heard this day and was argued by counsel; and thereupon, the premises being seen and fully understood, it is ordered that said motion be and it hereby is denied. And it is further ordered that said defendants file their answer in this cause on or before the first day of August next, and that this cause be and hereby is set for final hearing on the 12th day of November, A. D. 1923, at the opening of Court on that day.

[fol. 42] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION—Filed July 26, 1923

It is stipulated by and between counsel for plaintiff and for defendants that the time within which the defendants may answer may be extended to and including August 8, 1923.

Edward J. Bowman, Attorneys for Plaintiff. Travis, Merrick, Warner and Johnson, Attorneys for Defendant.

[fol. 43] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME

Pursuant to the stipulation by and between counsel for plaintiff and for defendants, it is ordered that the time within which the defendants may answer is hereby extended to and including August 8, 1923.

[fol. 44] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed August 6, 1923

The joint and several answers of W. D. Young & Company, Mitchell Brothers Company, Wisconsin Land & Lumber Co., Cobbs & Mitchell, Inc., I. Stephenson Co., Trustees, Cummer-Diggins Co., Osgood & Blodgett Mfg. Co., Holt Hardwood Company, Kerry & Hanson Flooring Company, East Jordan Lumber Co., Nichols & Cox Lumber Co., Strable Lumber & Salt Co., Foster-Latimer Lumber Co., West Michigan Flooring Co., J. W. Wells Lumber Co., Northwestern Cooperage & Lumber Co., Flanner-Steger Land & Lumber Co., Grand Rapids Trust Company, as Receiver for William Horner, North Branch Flooring Company, The Bigelow Cooper Co. (impleaded herein as The Bigelow Copper Co.), Kneeland-McLurg Lumber Co. (impleaded herein as Kneeland-McClurg Lumber Co.), and Oval Wood Dish Corporation (hereinafter called the "Defendant Corporations"), Maple Flooring Manufacturers Association (hereinafter called the "Defendant Association" [fol. 45] tion), George W. Keehn (impleaded herein as George R. Keehn), B. P. Whedon, M. E. Thomas, G. W. Earle, H. H. Shepeck, J. L. Colby, F. S. Blodgett, W. L. De Witt (impleaded herein as W. L. De Wit), F. R. Welsh (impleaded herein as F. R.

Walsh), J. J. Porter (impleaded herein as J. A. Porter), F. E. Holland, George Strable, H. I. Latimer, Edwin Vollmer (impleaded herein as Edwin Bolmer), W. H. Greene (impleaded herein as W. H. Green), Mary Vollmer (impleaded herein as Mary Bolmer), A. C. Wells, C. H. Law (impleaded herein as H. C. Law), J. D. Staple, P. D. Flanner, T. M. Ralston, C. A. Brand, J. E. Dewey, P. S. McClurg (impleaded herein as P. S. McClurg) and F. M. Hodges (impleaded herein as F. M. Hedges) (hereinafter called the "Individual Defendants") to the Petition of the Plaintiff in the above-entitled cause. Said Defendant Corporations, Defendant Association and Individual Defendants will, together, be hereinafter called the "Defendants."

Now come the Defendants, and each of them, and for answer to the Petition of the Plaintiff in the above entitled cause, say:

I

That with the corrections in the names of the Defendants hereinbefore set forth, the Defendants, and each of them, admit the allegations of fact contained in Paragraph I of the Petition, except that the Defendants, and each of them, deny that Mary Vollmer, impleaded herein as Mary Bolmer, is now or ever has been a representative of the Defendant, West Michigan Flooring Company, to the Defendant Association, as alleged in the Petition.

[fol. 46]

II

That the Defendants admit that some, but deny that many of the Defendant Corporations maintain their principal offices and have their mills for the manufacturing of flooring within this District or that they there manufacture large quantities of Maple, Beech or Birch flooring, and deny that the Defendants or any or either of them make sales of flooring manufactured by them from their offices in said District, or that they thereupon ship said flooring in interstate trade and commerce from said District into other States to the wholesale and retail lumber dealers who have contracted for its purchase, as alleged in paragraph II of said Petition.

That the Defendants, and each of them, deny that the alleged sales and shipments, or any or either of them, or any sales or shipments whatsoever, are or ever were made pursuant to or in conformity with the restrictive practices or agreements described in the Petition, or any other restrictive practices or agreements whatsoever, or that said alleged practices and agreements, or any or either of them, are or ever were enforced from the offices in this District of the Individual Defendants, M. E. Thomas and A. C. Wells, or either of them, as respectively the Vice President and the Treasurer of the Defendant Association, or in any other capacity, as alleged in the Petition, or otherwise, or that the alleged practices and agreements, or any or either of them, are or ever were enforced from any other offices either within or without said District, or by any other persons whomsoever, or otherwise.

[fol. 47]

III

That the Defendants and each of them admit that the Defendant Corporations are engaged in the business of manufacturing Maple, Beech and Birch flooring which is extensively used throughout the country in the construction of residences and other buildings; but deny that approximately half of the Defendant Corporations, or any or either of them, own timber land and sawmills, as well as flooring mills, or that they or any or either of them conduct logging operations and saw the rough lumber which they use for the manufacture of flooring, as alleged in the Petition.

That none of the Defendants have sufficient knowledge or information upon which to form an opinion or belief as to whether the membership of the Defendant Association comprises practically all the manufacturers of Maple, Beech and Birch flooring within the States of Michigan, Illinois, Wisconsin and Minnesota, as alleged in the Petition, and, therefore, deny that such is the fact and call upon Plaintiff to make strict proof of the allegation contained in paragraph III of the Petition with respect to such matters.

That none of the Defendants have any knowledge or information upon which to form an opinion or belief as to whether the membership of the Defendant Association represents approximately Seventy per cent or any other percentage, of the total manufacturing capacity of Maple, Beech and Birch flooring in the United States, as alleged in the Petition, and, therefore, deny such allegation and call upon the Plaintiff to make strict proof of the allegation contained in paragraph III of the Petition with respect to such matters.

[fol. 48]

IV

That the Defendants, and each of them, deny that the Defendant Corporations, or any or either of them, from the date each became a party to any or all of the alleged contracts, or Articles of Association, or alleged Minimum Price Plans of the Defendant Association, as alleged in the Petition, or that during all or any of the time that each has been a party thereto, as alleged in the Petition, or at any other time or times, or that the individual defendants, or any or either of them, from the date that each became a representative to the Defendant Association of a member thereof, or became an officer, or an employee thereof, or that during all or any part of the time that each has been such representative, officer or employee, or at any other time or times, have contracted, combined or conspired with each other, or with one another, or with any other persons, firms, associations or corporations whomsoever, to eliminate all competition or any competition between the members of the Defendant Association, or anyone else, in manufacturing, transporting or selling, in interstate trade and commerce, the Maple, Beech and Birch flooring, or any or either of them, manufactured by them, or any or either of them, or anyone else, in the States of Minnesota, Wisconsin, Illinois, Michigan and New York, or any or either of them, or elsewhere, transported therefrom or elsewhere and sold in the course of interstate

trade and commerce in all of the States of the United States, or any or either of them, or in the District of Columbia, in violation of Section 1 of the Act of Congress of July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," known as the Sherman Anti-Trust Act, as alleged in the Petition, or otherwise.

[fol. 49]

V

That the Defendants, and each of them, deny that the alleged combination or conspiracy mentioned in the Petition was brought about or accomplished, or that it is now being maintained in the manner or by the means stated in the Petition, or otherwise.

That they, and each of them, deny that the Defendant Association has been in existence since 1895, or that it was reorganized by a mutual agreement or Articles of Association entered into by the Defendant Corporations, or any or either of them, and by other manufacturers of flooring, or by anyone else, under date of January 1, 1913, or any other date, or that it has been continued in existence by other mutual agreements, or Articles of Association entered into by the Defendants, or any or either of them, at various dates thereafter, or any other dates, or by any other means, as alleged in paragraph V of the Petition. That they and each of them deny that the Defendant Association is now being maintained under or in accordance with the provisions of the Articles of Association dated January 1, 1922, or that said Articles of Association will be in effect until January 1, 1925, as alleged in the Petition. That they, and each of them, deny that all the Defendant Corporations or any or either of them are now parties to said Articles of Association or that through the individual defendants as their representatives they take an active part in all the activities of the alleged Defendant Association or any part thereof, as alleged in the Petition. That they, and each of them, deny that all the alleged Articles of Association mentioned in the Petition, or any or either of them, have provided for the formal organization of the Defendant Association with head- [fol. 50] quarters at Chicago, Illinois, or for the usual officers and a Board of Trustees to supervise and manage its activities, or for a special fund or membership fee fund as a guaranty for the fulfillment of the obligations assumed by its members, or for an expense fund created or maintained by assessments levied on its members, as alleged in paragraph V of the Petition. That they, and each of them, deny that the alleged Articles of Association, prior to those of January 1, 1922, or any or either of them, established a pooling arrangement between the members of the Defendant Association, or any or either of them, by allotting to each or any member a certain percentage of the total business, by creating a general fund through or by payments from all or any members on shipments over their prescribed allotted percentages and by providing for payments from said general fund to members shipping less than their prescribed allotments, as alleged in the Petition, or by any other means. That they, and each of them, deny that the Defendant Corporations or

any or either of them operated under the arrangement described in the Petition for the pooling of their businesses continuously from January 1, 1913, until on or about March 31, 1920, or at any other time or times.

That the Defendants, and each of them, deny that under dates, respectively, of July 1, 1916, July 1, 1919, and January 6, 1921, or at any other time or times, the Defendant Corporations, or any or either of them, alone or in conjunction with any other persons, firms or corporations, entered into any mutual agreement or agreements termed "Minimum Price Bases" or "Minimum Price Plans," or that any of said alleged agreements constituted an amendment to the Articles of Association under which the Defendant Association was being maintained, as alleged in the Petition, or otherwise, and deny that the Defendant Association was, at any of said times, in [fol. 51] existence. That the defendants, and each of them, deny that by the alleged Minimum Price Plans, or any other means, the Defendant Corporations, or any or either of them, agreed to establish minimum prices for the sale of Maple, Beech and Birch flooring, or any or either of them, or agreed not to sell any such flooring below said minimum prices, as alleged in the Petition, or below, above or at any other prices whatsoever. That they, and each of them, deny that the said alleged plans specified certain elements, or any other elements, which should be used as the basis for determining an average cost of manufacturing and selling flooring, or the average percentage of net profit which should be added to said alleged average cost, in order to establish said alleged minimum prices, or any other price or prices. They, and each of them, deny that said alleged plans also provided that said minimum prices, or any other prices, should be the delivered prices in the alleged "Table of Values" or in the alleged "Association Rate Book and Index of Towns" described in the Petition, or that the alleged plans specified the concessions and commissions, or any or either of them, or any other concessions or commissions which could be allowed, or the terms of sale that should be enforced, as alleged in the Petition, or otherwise.

The Defendants, and each of them, deny that in or by said alleged Articles of Association of January 1, 1922, the defendants, or any or either of them, substituted for the alleged minimum prices plans a statement of policy, to the effect that a careful consideration of the question of cost is recognized as the only scientific method of conducting the business of manufacturing and marketing Maple, Beech and Birch flooring, or any statement whatsoever, or provisions that the Defendant Association furnish to its members information re- [fol. 52] garding the average cost of such flooring when manufactured, sold and delivered F. O. B. cars at the flooring plants, as determined from time to time by surveys of costs, as alleged in the Petition, or otherwise. That they, and each of them, deny that the alleged agreement specifies that certain enumerated fundamental elements are to be considered as entering into and determining the alleged average costs, and deny that the alleged elements are identical

with those alleged to have been employed in accordance with the alleged Minimum Price Plans for the determination of minimum prices, as alleged in the Petition, or otherwise. That they, and each of them, deny that the alleged elements specified as entering into costs, both by the alleged Minimum Price Plans and by the alleged Articles of Association, or any or either of them, contain many or any items of profit, as alleged in the Petition, or otherwise. They and each of them, deny that there was substituted in the alleged Articles of Association "a reasonable allowance to provide for contingencies or unforeseen hazards incident to manufacturing operations," for the alleged item of profit under the alleged Minimum Price Plans, or that the alleged average costs, with the addition of a percentage to constitute "a reasonable allowance to provide for contingencies or unforeseen hazards incident to manufacturing operations" have represented, or now represent, all possible elements of actual costs and also large or any profits to the Defendant Corporations, or any or either of them, as alleged in the Petition or otherwise. That they, and each of them, deny that with the addition to the alleged costs of a percentage thereof to allow profit under the alleged Minimum Price Plans, the alleged minimum prices have represented, or now represent, all possible elements of actual cost and also large or any profits to the Defendant Corporations, or any or either of them, as alleged in the Petition, or otherwise.

[fol. 53] That the defendants, and each of them, deny that in accordance with the alleged Minimum Price Plans, or any other plan or plans, or in accordance with the alleged 1922 Articles of Association, or any other articles, the defendants, or any or either of them, from time to time from 1913 until the present date, or at any other time or times, have made surveys of cost and have determined therefrom minimum prices, or any other prices, or so-called "average costs," as alleged in the Petition, or otherwise, or that they, or any or either of them, have recommended that the Defendant Corporations should not sell flooring at prices below the alleged minimum prices, or below the alleged average costs, or made any other recommendations, whatsoever, with respect to prices, or with respect to alleged average costs. That they, and each of them, deny that the Defendant Corporations, or any or either of them, have at all times during said period, or at any time or times during said period, or at any other time or times, accepted or acted upon the alleged recommendations, or have concertedly, or otherwise, established or maintained, as the basis of the individual selling prices, the alleged minimum prices, or alleged average costs, determined as described in the Petition, or otherwise, and deny that the Defendant Corporations, or any or either of them, concertedly or otherwise maintained, or now maintain, the alleged minimum prices, or the alleged average costs, or any other prices or costs, or that the Defendant Corporations, or any or either of them, concertedly, or otherwise, maintained or now maintain the alleged uniform terms of sale, or the alleged uniform rules with regard to allowing cash discounts, or the alleged uniform commissions, or the alleged uniform rules regarding the

allowance of commissions and concessions, or that any such uniform [fol. 54] terms of sale, or uniform rules, or uniform commissions were established by, or in accordance with the alleged Minimum Price Plans, or any other plans, and deny that by said means, or by any other means, the Defendant Corporations, or any or either of them, have always, or at any time during said period, maintained or that they, or any or either of them, now maintain a practical uniformity between themselves of net F. O. B. selling prices, as alleged in the Petition, or otherwise, or that any prices of the Defendant Corporations for flooring have ever even approached uniformity, but allege that, on the contrary, all the prices of the respective Defendant Corporations for their flooring have always varied and do now vary widely.

That the Defendants, and each of them, deny that with the alleged determinations of the alleged minimum prices, or the alleged so-called average costs, the Defendant Association has, from time to time, or at any time, prepared or distributed to the Defendant Corporations so-called Freight Rate Books, and deny that said books contain tables of the freight rates from Cadillac, Michigan, to many cities and towns in all the States of the United States, or any or either of them, or otherwise as alleged in the Petition, and deny that the alleged Freight Rate Books or any or either of them contain an average cost chart showing the average cost F. O. B. cars of the principal or any items of Maple flooring in the three established grades, or any grades, or table or tables of differentials for the determination of average costs of all or any kinds of Maple, Beech or Birch Flooring, either by additions to or subtractions from said alleged average cost charts, and deny that said alleged Freight Rate Books or any or either of them, contain statements of the alleged extra charges for special grades, for special sizes, or for special lengths, or any other charges, whatsoever, or statements of the terms [fol. 55] of sale, or of the rules for allowing cash discounts, and deny that the alleged Freight Rate Books or any or either of them contain delivered ~~costs~~ charts showing the average so-called cost of any item of flooring, including the freight from Cadillac, Michigan, when delivered at any destination, as alleged in the Petition, or otherwise. They and each of them deny that by means of the alleged Freight Rate Books, or any or either of them, or by any other means, the Defendants, or any or either of them, from 1913 continuously until the present date, or at any other time or times, have been enabled to determine the alleged delivered minimum price, or any other price for any item of Maple, Beech or Birch flooring at any destination in the United States, either in accordance with the alleged Minimum Price Plans, or have been enabled to determine the average cost thereof, in accordance with the alleged 1922 Articles of Association, or otherwise. That they and each of them, deny that they, or any or either of them, agreed to adopt, or that they, or any or either of them, have concertedly adopted Cadillac, Michigan, as an arbitrary freight basing point from which they, or any or either of them, compute or charge freight regardless of the point from which they, or any or either of them, may actually ship flooring, and further deny that

they, or any or either of them, agreed to adopt, or have concertedly, or otherwise, adopted or used, or that they, or any or either of them, still continued to use the alleged minimum prices, or the alleged so-called average costs stated in the alleged Freight Rate Book as the basis of their, or any or either of their individual selling prices, or that by concertedly maintaining the same, and the alleged uniform charges and practices described in the Petition, or any or either of them, or by any other means, they, or any or either of them, have [fol. 56] always or ever maintained, or that they, or any or either of them, still maintain a practical or other uniformity between themselves of net delivered prices, as in the Petition alleged, or otherwise.

That the Defendants, and each of them, deny that they, or any or either of them, adopted, or that for many years, or any other period of time, have operated under the alleged so-called open price reporting plan, or open competition plan, and further deny that said alleged plan is included in the alleged Articles of Association of January 1, 1922, and that in accordance therewith, or otherwise, the Defendant Corporations, or any or either of them, render to George W. Keehn (impleaded herein as George R. Keehn), as Secretary of the Defendant Association, or in any other capacity, or individually, or to anyone else, any of the reports mentioned in subparagraphs (a) to (h), both inclusive, of Section 5 of paragraph V, on page 11 of the Petition, or that said George W. Keehn, as Secretary of the Defendant Association, or otherwise, receives or compiles the alleged reports, or prepares therefrom or distributes to the Defendant Corporations, or any or either of them, any of the statistical reports set forth in subparagraphs (a) to (j), both inclusive, of Section 5 of Paragraph V, on pages 11, 12 and 13, both inclusive, of the Petition. That they, and each of them, deny that they, or any or either of them, know the index numbers of any of the Defendant Corporations, or that the Defendants, or any or either of them, are fully or otherwise advised as to every detail, or any detail whatsoever, except the name of the purchaser and the destination of the shipment of every or any sale of flooring made by every or any member of the Defendant Association, as alleged in the Petition, or otherwise. That they and each of them, deny that the alleged monthly statistical reports, or any or either of them, are published in trade papers at such times that the defendants, or any or either of them, have the alleged information earlier than the general public, and deny that the alleged distribution of the alleged weekly detailed information as to sales and prices, or any or either of them, is confined to the Defendant Corporations, or any or either of them.

That the Defendants, and each of them, deny that prior to 1922, or at any other time or times, the defendant George W. Keehn (impleaded herein as George R. Keehn), as Secretary of the Defendant Association, or otherwise, generally, or at all, transmitted the alleged statistical reports, or any or either of them, to the Defendant Corporations, or any or either of them, of the alleged open competition plan, or that said alleged reports, or any or either of them, were accompanied by the comments of George W. Keehn, as Secretary, or otherwise, interpreting the same, or any comments whatsoever, or

with statements and comments, or any or either of them, regarding general conditions in the industry, as alleged in the Petition, or otherwise. That they, and each of them, deny that since 1921, they have substituted for the alleged written comments and statements, or any or either of them, the system of holding frequent meetings, or any other system, or that they now assemble monthly at association meetings and discuss the prices or supplies of rough flooring lumber, or the costs of manufacturing or selling flooring, or the conditions of supply and demand in the flooring industry, or trade conditions, or the flooring situation in general, either as reflected by the alleged statistical reports of the Defendant Association, or otherwise. They, and each of them, deny that at said alleged meetings, they, or any or either of them, exchange with each other or with one [fol. 58] another, all or any information which they, or any or either of them, have, or all or any of the experiences which they, or any or either of them, have had in their, or any or either of their, several businesses, which can be of general interest to them as manufacturers of Maple, Beech or Birch flooring, as in the Petition alleged, or otherwise.

That the Defendants, and each of them, deny that George W. Keehn (impleaded herein as George R. Keehn) secures from the Defendant Corporations on blank forms distributed by him, or otherwise, any information as to orders, production or shipments for the portion of each month preceding such monthly meetings, and that the alleged data are compiled or discussed at the alleged meetings, as in the Petition alleged, or otherwise, and deny that the defendants, or any or either of them, forecast therefrom or otherwise the probable amounts of orders, of shipments or production for the entire month, or any other period, or that they, or any or either of them, compare the same with similar data for the preceding months, as in the Petition alleged, or otherwise.

That the Defendants, and each of them, deny that the alleged Committee on Cost Surveys of the Defendant Association frequently, or otherwise, reports at said alleged meetings respecting the supplies of rough flooring lumber, or that the alleged Committee gives its opinion as to the actual market value of such lumber or as to the average cost of manufacturing and marketing flooring, as in the Petition alleged, or otherwise.

That the Defendants, and each of them, admit the allegations of fact contained in Section 7 of paragraph V of the Petition, and aver that said trade-mark was adopted and is now being maintained [fol. 59] and that the several grades of flooring were standardized and are now being maintained at great cost and expense to the Defendant Association, for the purpose of protecting the public from inferior material and so as to enable the public to freely purchase flooring from any member of the Association, with the assurance that said flooring would be of the highest quality and could be used with the flooring procured from any other member of the Defendant Association. That the establishment and maintenance of standard

grades and the use of said trade-mark has been of great and lasting benefit to the public and of no injury whatsoever.

That the Defendants, and each of them, deny that the Defendant Association has for a number of years conducted an extensive advertising campaign, as alleged in the Petition, but admit that the Defendant Association has, since the first day of January, 1922, conducted and is still conducting an advertising campaign for the purpose of promoting the use of Maple, Beech and Birch flooring and of emphasizing that purchasers should secure flooring bearing the Defendant Association's trade-mark, but deny that said advertisements carry the name of the Defendant Association alone, and not the names of its members, and aver that some of said advertisements carry the names of the members of the Defendant Association, and admit that some of said advertisements do not carry the names of the members of the Defendant Association, and admit that all the advertisements state that flooring bearing the Defendant Association's trade-mark is standardized and guaranteed by the Defendant Association. That the Defendants, and each of them, deny that any of said advertisements contain price propaganda, urging purchases of flooring at the time of the publication of said advertisements, or [fol. 60] any price propaganda whatsoever, on the ground that the price is fully adjusted to existing conditions, or any other grounds, but admit that inquiries received by the Defendant Association in answer to advertisements published by it are bulletined by the Defendant Association to the Defendant Corporations.

VI

That the Defendants, and each of them, deny that the alleged surveys, or reports of average cost, and the alleged tables of delivered values, or any or either of them, constitute a uniform or other basis on which the Defendants, or any or either of them, establish their individual selling prices irrespective of their individual costs, as in the Petition alleged, or otherwise; or that together with the alleged weekly report giving detailed information as to every sale made by each Defendant, the alleged uniform use of the freight basing point, and the alleged maintenance of the uniform trade practices, or any or either of them, the Defendants, or any or either of them, have practically, or at all, eliminated all or any price competition between the Defendants, or any or either of them, as alleged in the Petition, or otherwise. The Defendants, and each of them, further deny that the use of the uniform trade-mark, and the character of the advertising put out by the Defendant Association, or either of them, intensify the tendency to establish or maintain, or that they, or either of them, have any tendency to establish or maintain uniform prices, or to eliminate practically, or otherwise, all or any competition between the Defendants, or any or either of them, based on the quality of their respective products, or any or either of them, as alleged in the Petition, or otherwise. [fol. 61] That the Defendants, and each of them, deny that the alleged elaborate information alleged to be and to have been furnished

the Defendants by the alleged reporting system of the Defendant Association enables the Defendants, or any or either of them, to forecast the trend of conditions in the industry, or the course of prices, or gives them, or any or either of them, an unfair advantage, or any advantage whatsoever over the general public, or that it prevents the free operation of the economic law of supply and demand. That the Defendants, and each of them, further deny that the alleged discussions at the alleged meetings, as set forth in the Petition, intensify, or even tend to intensify, or to cause the condition alleged in the Petition, or tend to cause, or do cause, the substitution on the part of the Defendants, or any or either of them, of uniform and concerted action for individual action. The Defendants, and each of them, deny that the alleged reporting plan and the alleged discussions at the alleged monthly meetings, or any or either of them, tend to accelerate, or do accelerate, upward movements of prices, or retard, or tend to retard downward movements, as alleged in the Petition, or otherwise.

That the Defendants, and each of them, further deny that there now is or ever has been between any or either of them any unlawful combination or conspiracy either as described in the Petition, or otherwise, and further deny that the competition in the manufacture and sale of Maple, Beech and Birch flooring, to which the public is entitled, has ever been or now is eliminated or otherwise affected to any extent whatsoever, between or among the Defendants, or any or either of them, by reason or on account of any acts, matters or things alleged to have been done, or suffered to have been done by the Defendants, or any or either of them, or that there now exists, or has ever existed, an unreasonable or unlawful restraint of interstate trade and commerce within the meaning of the Sherman Anti-Trust Act, by reason of any acts, matters or things done or suffered to be done by the defendants, or any or either of them.

That the Defendants deny that the Plaintiff is entitled to the relief prayed for in the Petition or any part of such relief.

Having fully answered all the matters and things contained in the Petition, the Defendants, and each of them, pray that the Petition be dismissed and that they and each of them have judgment for their and each of their costs in this behalf by them sustained.

For a further, additional and separate answer, and by way of a special defense to the matters and things alleged in the Petition, the Defendants, and each of them, say:

I

That the Maple Flooring Manufacturers' Association was organized and first came into existence on January 1, 1922, and is now and at all times has been a voluntary association, open to all manufacturers of Maple, Beech and Birch flooring in the United States without any limitations or restrictions whatsoever.

That the membership of the Defendant Association, their respective representatives and their respective places of business, are now and at all times since the organization of the Defendant Association have been as set forth in the following statement:

[fol. 63] Members	Representatives	Location of plant
W. D. Young & Company.....	B. P. Whedon.....	Bay City, Mich.
Mitchell Brothers Company..	M. E. Thomas.....	Cadillac, Mich.
Wisconsin Land & Lumber Co. G. W. Earle.....		Hermansville, Mich.
Cobbs & Mitchell, Inc.....	M. E. Thomas.....	Cadillac, Mich.
I. Stephenson Co., Trustees..	H. H. Shepeck.....	Wells, Mich.
Cummer-Diggins Co.....	J. L. Colby.....	Cadillac, Mich.
Osgood & Blodgett Mfg. Co..	F. S. Blodgett.....	St. Paul, Minn.
Holt Hardwood Company....	W. L. De Witt.....	Oconto, Wis.
Kerry & Hanson Flooring Company.	P. R. Welsh.....	Grayling, Mich.
East Jordan Lumber Co.....	J. J. Porter.....	East Jordan, Mich.
Nichols & Cox Lumber Co....	F. E. Holland.....	Grand Rapids, Mich.
Strable Lumber & Salt Co....	George Strable.....	Saginaw, Mich.
Foster-Latimer Lumber Co..	H. I. Latimer.....	Mellen, Wis.
West Michigan Flooring Co..	Edwin Vollmer, W. H. Greene.	Manistee, Mich.
J. W. Wells Lumber Co.....	A. C. Wells, C. H. Law.	Menominee, Mich.
Northwestern Cooperage & Lumber Co.	J. D. Staple.....	Gladstone, Mich.
Flanner-Stegel Land & Lumber Co.	P. D. Flanner.....	Blackwell, Forest Co., Wis.
Grand Rapids Trust Company, as Receiver for William Horner.	T. M. Ralston.....	Newberry & Reed City, Mich.
North Branch Flooring Company.	C. A. Brand.....	Chicago, Ill.
The Bigelow Cooper Co.....	J. E. Dewey.....	Bay City, Mich.
Kneeland-McLurg Lumber Co.	F. M. Hodges.....	Phillips, Wis.
Oval Wood Dish Corporation.	P. S. McClurg.....	Tupper Lake, N. Y.

except that the Wisconsin Land & Lumber Co. is not now and has not been a member of the Defendant Association since on or about the 17th day of March, 1923, and that since said date neither G. W. Earle, nor any other person has represented said Wisconsin Land & Lumber Co. as a member of the Defendant Association.

That all the members hereinbefore mentioned are manufacturers of Maple, Beech or Birch flooring.

That the officers of the Defendant Association are now and ever since its organization on January 1, 1922, have been as follows:

President.....	B. P. Whedon
Vice President.....	M. E. Thomas
Treasurer.....	A. C. Wells
Secretary.....	George W. Keehn

[fol. 64] That neither the defendant Maple Flooring Manufacturers' Association, nor George W. Keehn, individually nor as Secretary of said Association, is now or ever has been engaged in the manufacture or sale of Maple, Beech or Birch flooring.

III

That the objects and purposes of the Defendant Association are and always have been to encourage and increase the use of Maple, Beech and Birch flooring in the United States by all lawful means; to constantly improve methods of manufacture; to establish uniform grades and standards of products; to ascertain the cost of manufacturing Maple, Beech and Birch flooring, and by all lawful means to collect and disseminate information concerning the general state of the Maple, Beech and Birch flooring industry.

That the Defendant Association was not organized for the purpose of regulating or controlling the price, output, manufacture, purchase or sale of Maple, Beech or Birch flooring and that neither the Defendant Association, nor the Defendants, nor any nor either of them have, either directly or indirectly, done so, or attempted to do so.

IV

That since January 1, 1922, the Defendant Association and its officers and the members, and their representatives have, from time to time, made test runs and surveys of the cost of manufacturing Maple, Beech and Birch flooring, and the results of such tests and surveys have, from time to time, been communicated to the members of the Defendant Association. That said information was obtained and distributed for the sole purpose of informing the members of the Defendant Association as to the cost of the manufacture of Maple, Beech and Birch flooring. That no member of the Defendant Association was, is or ever has been required, under any penalty or otherwise, by the Articles of Association, or by any understanding or agreement, express or implied, to adopt, follow, or use said information, or any part thereof, in the conduct of his business, or to be controlled thereby, in determining at what price or prices such member should sell the Maple, Beech or Birch flooring manufactured by him. That at all times each and every member of the Defendant Association has exercised his own independent judgment in determining what it actually costs such member to manufacture Maple, Beech and Birch flooring and in determining the price at which he should sell the same and that in truth and in fact the members of the Defendant Association or any or either of them have never sold, nor agreed to sell Maple, Beech or Birch flooring, or any or either of them, at any agreed or uniform price or prices whatsoever, and that the prices at which the several members of the Defendant Association sell and at all times have sold the flooring manufactured by them, do now and always have substantially varied, and that such prices are now and have always been fair and reasonable to the public.

That in transmitting to the members of the Defendant Association said information, no recommendations of any kind or character whatsoever were ever made, either directly or indirectly, to such members, or any or either of them, that they should follow, adopt, use, or be guided by such information, but the whole matter,

both of cost of manufacture and price, has always been left to the individual and independent judgment of each member, and that [fol. 66] in fact each member has always exercised his independent judgment with respect to such matters, and that none of the Defendants have ever attempted to regulate or fix the price of Maple, Beech or Birch flooring.

That in endeavoring to arrive at the cost of manufacturing Maple, Beech and Birch flooring, the Defendants exercised good faith in so doing, and included therein no items of profit whatsoever, and the Defendants say that the information so compiled and distributed, from time to time, did in fact truthfully and accurately represent the cost of manufacturing Maple, Beech and Birch flooring.

That the manufacture of Maple, Beech and Birch flooring is essentially hazardous, and that in endeavoring to ascertain the cost of manufacturing Maple, Beech and Birch flooring, the Defendant Association has heretofore added to the actual cost of manufacturing such flooring as shown by said test runs Five per cent of such actual cost as a reasonable allowance for the contingencies and hazards of such manufacture over any considerable period of time. The Defendants aver that Five per cent is reasonable and did not cover the losses arising from the hazards incident to the manufacture of such flooring; but that upon learning from the Petition that the Plaintiff specially objected to the use of said Five per cent in ascertaining the cost of manufacture of such flooring, the Defendant Association has eliminated said Five per cent from the methods employed in endeavoring to arrive at the cost of the manufacture of such flooring.

[fol. 67]

V

That approximately Ninety-five per cent of all the Maple, Beech and Birch flooring sold by the several Defendants is delivered by them to the purchasers F. O. B. cars at destination. That in selling Maple, Beech or Birch flooring delivered to the purchasers, none of the Defendant manufacturers make a separate charge for the freight on said flooring, but that each Defendant manufacturer charges a delivered price for Maple, Beech or Birch flooring. That the selling of Maple, Beech or Birch flooring F. O. B. cars at destination is not the result of any agreement or understanding, express or implied, by or between the Defendants, or any or either of them, but is now, and for many years past has been done and is done by most manufacturers of Maple, Beech and Birch flooring acting independently of one another, for the reason that the purchasers generally do not and will not buy flooring F. O. B. at the mills, because they insist upon knowing in advance what the Maple, Beech or Birch flooring will cost them delivered, and because they also insist that the manufacturers of such flooring shall run the risks incident to its transportation.

That each of the Defendant manufacturers daily receives a great many inquiries as to delivered prices for Maple, Beech and Birch

flooring from many different points throughout the United States. That many of the defendant manufacturers are located in small or country communities, where there are no facilities for promptly obtaining accurate information concerning freight rates to the innumerable towns and cities where Maple, Beech or Birch flooring is used, and that if the Defendant manufacturers were compelled to ascertain the freight rates from their respective flooring mills [fol. 68] to the various places of delivery, business could not be safely, economically or expeditiously carried on, unless each Defendant manufacturer established at his mill a special Traffic Department, at great expense, as is done by only very large manufacturing corporations.

That approximately eighty-five per cent of the Maple, Beech and Birch flooring sold by the members of the Defendant Association is manufactured in the State of Michigan. That the mills at which said percentage of flooring is manufactured are located at, about, around or near Cadillac, Michigan, which is the production center of the Maple, Beech and Birch flooring industry in the middle west.

That the Defendant manufacturers sell Maple, Beech and Birch flooring at delivered prices to points, North, East, South and West of Cadillac, Michigan, throughout the United States, and that the freight rates from the various points of shipment do not differ substantially from the freight rate from Cadillac, Michigan, to the various points of delivery.

That the average freight rate from the points in Michigan and Wisconsin where Maple, Beech and Birch flooring are manufactured, to the principal markets in the United States, is approximately the same as the rate from Cadillac, Michigan, to said principal markets. That for the convenience of the Defendant manufacturers in the conduct of their respective businesses, and to enable them to readily ascertain the approximate cost of delivering Maple, Beech and Birch flooring, in order to be able to quote delivered prices for such flooring, without the necessity of maintaining a traffic department, Casey & Learned, Inc., of Chicago, Illinois, compiled a list of cities and towns in the United States which took more than 7,600 rates of [fol. 69] freight, and used the rate of freight from Cadillac, Michigan, merely to represent the average rate of freight from all flooring mill points in Michigan and Wisconsin, to said towns and cities; and that said list was completed sometime during the year 1922 and that each Defendant manufacturer thereafter used and now uses said list merely for the purpose of obtaining information as to the approximate cost of delivering his Maple, Beech or Birch flooring; and that none of the Defendant manufacturers are now or ever have been under any constraint, duty or obligation to use said list, or any part of the same, in the conduct of their respective businesses, or to sell flooring upon the basis of the freight rates set out in said list, or to charge or collect either the freight rates set forth in said list, or any other freight rates, for delivering Maple, Beech or Birch flooring to any of the towns or cities named in said list, or

any other towns or cities in the United States; and that there is not now, nor has there ever been any understanding or agreement, express or implied, by or between the Defendants, or any or either of them, that the Defendant manufacturers, or any or either of them, or any of the Defendants, should in anywise use, or be guided or controlled by the said list, or any part thereof, in any particular whatsoever, in the sale or delivery of Maple, Beech or Birch flooring.

The Defendants, and each of them, say that each Defendant manufacturer, and the officers, employees, servants and agents of such manufacturer, have at all times been free to exercise their own independent judgment with respect to the charges to be made for delivering Maple, Beech or Birch flooring, and that in fact each manufacturer of flooring has at all times exercised his own dependent judgment as to the charges to be made for delivering Maple, Beech, or [fol. 70] Birch flooring, and that there is not now and has never been any uniform practice followed, either individually or collectively, by the Defendant manufacturers, or by any of the Defendants, with respect to freight rates or charges for the delivery of Maple, Beech or Birch flooring, anywhere in the United States.

VI

That from time to time since January 1, 1922, the Defendant Association has compiled, or caused to be compiled, delivered cost charts, relating to Maple, Beech and Birch flooring, and that said charts showed the cost of manufacturing and delivering Maple, Beech and Birch flooring to 7,600 towns and cities throughout the United States, taking freight rates from 4 cents to \$1.46 per hundredweight. That the cost of the freight was computed upon the average rate of freight from flooring mills in Michigan and Wisconsin, as represented by the rate of freight from Cadillac, Michigan, to the various points of delivery in the United States, for the reasons set forth in the preceding paragraph. That these charts were prepared for the convenience of the various members of the Defendant Association, and merely combined the information of said average cost and average rate of freight from the flooring mill points to the principal towns and cities in the United States. That none of the members of the Defendant Association were required by the Articles of Association, or by any resolution, or act on the part of the Association, or by any agreement or understanding, express or implied, between the Defendants, or any or either of them, to use said charts, or any or either of them, or any part or parts [fol. 71] thereof, or to be guided or controlled thereby; and that all the Defendant manufacturers, and each of them, and all the Defendants, and each of them, were at liberty to use the information contained in said charts, or not to use the same, as they or any of them saw fit. That as a matter of fact, each Defendant exercised his own independent judgment as to what it would cost him to manufacture and deliver Maple, Beech or Birch flooring to any town or city in the United States, and that there is not now and never has been any uniform practice with respect to such mat-

ters, either by the Defendants collectively, or by any of the Defendants individually, with respect to any of the matters above mentioned.

That the purpose of the Defendant Association in compiling said delivered cost charts was not to constrain, hamper or interfere with the individual liberty of any Defendant manufacturer in determining either the cost of manufacture or the cost of delivery of Maple, Beech, or Birch flooring, but that each manufacturer might use the same, if he so desired, for any purpose whatsoever. That said delivered cost charts were not used by any of the Defendants as pricelists, and there never was any understanding, or agreement, either express or implied, that said delivered cost charts should be used either as a price-list or for any other purpose. The said delivered cost charts were compiled by the Defendant Association in good faith for the uses and purposes hereinbefore mentioned and with no intention of violating the so-called Sherman Act, or any other law or statute of the United States; but upon learning from the Petition that the use of such delivered cost charts for any purpose was objected to by the Plaintiff, the Defendants wholly abandoned the compilation, distribution and use of the same.

That in addition to abandoning and discontinuing the compilation [fol. 72] tion, distribution and use of said delivered cost charts, the Defendant Association and all the Defendants have also eliminated from said Freight Rate List or book all matters relating to differentials, and all matters relating to terms of sale, cash discounts and similar items.

That for many years prior to the first day of January, 1922, it was the custom of manufacturers of Maple, Beech and Birch flooring in the States of Wisconsin, Michigan and other states to allow discounts for cash, discounts for the payment of bills before the expiration of the original time of payment and certain other trade practices had become of universal use; that such discounts, terms and practices were identical with the terms, discounts and practices hereinbefore mentioned and of which complaint has been made by the Plaintiff; that said terms, discounts and some of said practices were incorporated in said Freight Rate List, or book formerly compiled and distributed by the Defendant Association. That there never was any understanding or agreement, express or implied, by or between the Defendants or any of them with respect to any of the foregoing matters, and that since January 1, 1922, the practice of the several Defendant manufacturers has varied, and that each of said manufacturers has been free to exercise his own discretion and has at all times exercised his own discretion with respect to all of such matters. That inasmuch as the Plaintiff has objected to some of the matters above mentioned, the Defendant Association and the Defendants have concluded to abandon and have abandoned the publication and distribution among the members of the Defendant Association of all terms of sale and all the other matters hereinbefore mentioned.

That since January 1, 1922, the Defendant Association, at considerable cost and expense, has endeavored to collect and distribute among its members and publish for the benefit of wholesale and retail lumber dealers, as well as for the benefit of all purchasers and consumers of Maple, Beech or Birch flooring, data with respect to the state of the Maple, Beech and Birch flooring industry. That in the collection of such information the Defendant Association has from time to time sent its agents into various parts of the United States in order to keep in touch with building conditions, the demand for Maple, Beech and Birch flooring, and the extent to which such flooring was being used in competition with other floorings, both wood and synthetic.

That members of the Defendant Association have from time to time since January 1, 1922, forwarded to the Secretary of the Defendant Association reports concerning unfilled orders, stocks on hand, amounts of flooring shipped, new orders booked, production and average prices realized for flooring after deducting freight for certain grades of Maple flooring. That all the information above mentioned related wholly to past and completed transactions and most of it was from a week to one month old when it was received by the Secretary of the Association, and it thereafter took some time for the office force of the Association to copy the same and forward such information to all the members of the Defendant Association. That all the information in question was offered to be filed by the Defendant Association as and when received with the Department of Commerce of the United States, but said Department of Commerce refused to receive all of it, but offered to [fol. 74] receive certain parts thereof, and that all data which the said Department would accept have from time to time and in the ordinary course of business been transmitted by the Defendant Association to such Department of Commerce where it has remained at all times accessible to the public and has from time to time been published in the Survey of Current Business published by the Department of Commerce.

That the members of the Defendant Association deal exclusively with wholesale and retail lumber dealers and that their sales are made wholly to such wholesale and retail dealers; that said wholesale and retail lumber dealers are at all times thoroughly informed as to the state of the Maple, Beech and Birch flooring industry and of the lumber market generally. That notwithstanding such facts, the Defendant Association has from time to time sent to the principal lumber trade papers in the United States for publication information collected by it and that said papers have published much of such information. That said papers have a very extensive circulation throughout the United States and are subscribed for and read by wholesale and retail lumber dealers, by architects and other persons interested in the various phases of the lumber industry. That in addition to the foregoing publication of the information so obtained, the Defendant Association, at the request of the Federal Reserve

Bank of Chicago, has furnished said information to the said Federal Reserve Bank. That the Defendant Association has at all times been willing to make available to the public any and all information collected by it and has endeavored to give such information the widest possible circulation. That the Defendant Association has from time to time furnished to the agents and representatives of the Federal Department of Justice full and complete copies of its records, [fol. 75] files, papers and documents relating to the conduct of its activities and has permitted such agents and representatives to inspect its files, records, papers and documents and furnished them with copies of the same whenever requested so to do.

That said information has been and is collected and distributed by the Defendant Association not for the purpose of enabling its members or anyone else to limit production, or fix or enhance, regulate or control prices, or in any other manner to restrain, limit or interfere with interstate trade or commerce. That most of the members of the Defendant Association live in small communities away from the centers of consumption of Maple, Beech and Birch flooring. That the purpose of furnishing such information to the members of the Defendant Association was merely to place before them information from which each one for himself might draw his own separate and independent conclusion as to the state of the Maple, Beech and Birch flooring industry and as to business conditions as reflected by the supply and demand for such flooring.

That the Articles of Association of the Defendant Association nowhere provide for or impose any fines, or penalties of any kind or nature whatsoever, upon any of the Defendant members who failed to furnish any such information, or who fail to attend meetings, or for any other reason or cause whatsoever.

That the collation and distribution of such information has not enhanced the prices of Maple, Beech or Birch flooring, or in anywise interfered with the free operation of the economic laws of supply and demand, but on the contrary have facilitated the free operation of such laws.

That the expense of collecting such information by each member [fol. 76] of the Defendant Association for himself would be so great as to be prohibitive and that none of the members of the Defendant Association are financially able, or of a sufficient size to incur such expense, which is usually undertaken only by corporations of great magnitude and great financial strength. That neither the collection nor the distribution of such statistical information, nor any other of the activities of the Defendants, or of any or either of them, have in anywise restrained, diminished or eliminated, or caused to be restrained, diminished or eliminated, the free flow of interstate trade and commerce in Maple, Beech or Birch flooring, either as between the Defendants, or as between all or any of the Defendants and other manufacturers of Maple, Beech or Birch flooring, and that there has at all times existed bona fide competition between all the Defendants and each of them and between each of the Defendants and other manufacturers of Maple, Beech and Birch flooring. That the prices for Maple, Beech and Birch flooring are fixed absolutely by the com-

petition above described and the economic laws of supply and demand and that said prices have always been and are now fair and reasonable to the public.

That prior to the filing of this answer the Defendant Association revised and altered its methods of transmitting to its members the foregoing information collected by the Association, and that the information now forwarded to the Defendant Association by its members, as hereinbefore set forth, is consolidated before it is distributed to said members, and that said information is now consolidated and transmitted to the members in such way and manner as not to disclose to any member or members, any of the particulars, or intimate details of any other member's business, and that neither from the information so transmitted by the Defendant Association, [fol. 77] nor from any other source, nor by any other means, can any member or members of the Defendant Association now learn or know, nor do such member or members learn or know, either the amount of unfilled orders, or the amount of stock on hand, or the amount of flooring shipped, or the amount of new orders booked, or the amount of production of Maple, Beech or Birch flooring, or the prices realized for any of such flooring, by any other member of the Defendant Association.

VIII

That since the Defendant Association was organized on January 1, 1922, its members have met on an average of about once a month, and that at said meetings the members discuss the general and financial business conditions of the country and the general condition of the Maple, Beech and Birch flooring industry, but that at none of such meetings was there ever any discussion, action, understanding or agreement, express or implied, by or between the Defendants, or any or either of them, with respect to limiting production, enhancing, fixing, regulating or controlling prices or otherwise restraining or interfering with the free flow of interstate trade and commerce in either the manufacture or sale of Maple, Beech or Birch flooring.

[fol. 78]

IX

That at considerable cost and expense the Defendant Association has established and maintained and now maintains standardized grades of Maple, Beech and Birch flooring and an inspection service in order to protect both the public and the Defendant manufacturers. That the grades established and maintained by the Defendants are of the very highest quality and are fair and reasonable to the public, to the Defendant manufacturers and to all users of Maple, Beech or Birch flooring. That the establishment and maintenance of said standardized grades have been of great benefit to the public and have not in anywise interfered with the free flow of interstate trade and commerce in Maple, Beech or Birch flooring.

That Defendant Association was organized at the time and has been conducted and is now being conducted in the manner herein-

before set forth and not otherwise. That the plaintiff is not entitled to the relief prayed for, or any part of such relief.

Wherefore, the Defendants and each of them, pray that the Petition be dismissed and for judgment for their and each of their costs by them in this behalf sustained.

As a further and separate answer, and by way of a further special defense to the matters and things alleged in the Petition, the Defendants and each of them say:

That there have never been any uniform prices established or maintained among or between the Defendants, or any or either of them. That on the contrary, there has always existed actual and bona fide competition among and between all the Defendants, their [fol. 79] officers, employees, servants and agents, in the manufacture and sale of Maple, Beech and Birch flooring, as well as between each of the Defendant manufacturers and other manufacturers of Maple, Beech and Birch flooring. That at all times the prices of Maple, Beech and Birch flooring have been fixed by the economic laws of supply and demand and not otherwise. That during all times the prices of Maple, Beech and Birch flooring have risen and fallen in absolute harmony with the rise and fall of all other commodities sold in the United States, and that the Defendants neither individually nor collectively have ever exercised nor attempted to exercise any control or domination, nor have they ever had any control or domination over the price of Maple, Beech or Birch flooring, but that each of the Defendant manufacturers has at all times accepted and been compelled to accept such prices for his Maple, Beech or Birch flooring as he was able to secure in the open market in competition with all other manufacturers of Maple, Beech or Birch flooring, including other members of the Defendant Association. That the prices of Maple, Beech and Birch flooring have always been fair and reasonable to the public and that no loss or injury has been incurred or sustained by any purchasers or consumers of Maple, Beech or Birch flooring by reason of the matters and things alleged in the Petition, or by reason of any other facts, matters or things whatsoever.

Wherefore, the defendants and each of them pray that the said petition be dismissed and that they and each of them have judgment for their costs incurred in this behalf.

[fol. 80] As a further and separate answer, and by way of a further and special defense to the matters and things alleged in the Petition, the Defendants and each of them say:

That even if the Defendant Association was organized during the year 1895, as alleged in the Petition (which the Defendants deny) and was at various times thereafter reorganized, and was conducted under different Articles of Association from time to time, and is now being maintained under Articles of Association dated January 1, 1922, nevertheless the Defendants aver that the practices alleged to have been pursued by the Defendants and other members of the Defendant Association, previous to January 1, 1922, have been discontinued and abandoned, and that since the signing of the Articles

of Association, dated January 1, 1922, the Defendants have carried on and conducted the activities of said Association, as stated in the first separate answer and special defense hereinbefore set forth, and not otherwise. That the activities of the Defendants since January 1, 1922, have not resulted in unreasonable prices for Maple, Beech or Birch flooring, and that what the Defendants have done since January 1, 1922, was not done as a part of an illegal scheme, or with the intent to limit, or curtail production, or to restrain competition, or to monopolize interstate trade or commerce, or any part thereof, or to restrain interstate commerce in the manufacture or sale of Maple, Beech or Birch flooring. That at all times since January 1, 1922, none of the Defendants have charged the public exorbitant or unreasonable prices for Maple, Beech or Birch flooring, but the Defendants and each of them aver that during all of said time the prices of Maple, Beech and Birch flooring have been fair and reasonable.

Wherefore the Defendants and each of them pray that [fol. 81] the Petition be dismissed and that they and each of them have judgment for their costs in this behalf by them sustained.

W. D. Young & Company, Mitchell Brothers Company, Wisconsin Land & Lumber Co., Colbs & Mitchell, Inc., I. Stephenson Co., Trustees, Cummer-Diggins Co., Osgood & Blodgett Mfg. Co., Holt Hardwood Company, Kerry & Hanson Flooring Company, East Jordan Lumber Co., Nichols & Cox Lumber Co., Strable Lumber & Salt Co., Foster-Latimer Lumber Co., West Michigan Flooring Co., J. W. Wells Lumber Co., Northwestern Cooperage & Lumber Co., Flanner-Steger Land & Lumber Co., Grand Rapids Trust Company, as Receiver for William Horner, North Branch Flooring Company, The Bigelow Cooper Co., Kneeland-McLurg Lumber Co. and Oval Wood Dish Corporation, Maple Flooring Manufacturers Association, George W. Keehn, B. P. Whedon, M. E. Thomas, G. W. Earle, H. H. Shepeck, J. L. Colby, F. S. Blodgett, W. L. De Witt, F. R. Welsh, J. J. Porter, F. E. Holland, George Strable, H. I. Latimer, Edwin Vollmer, W. H. Greene, Mary Vollmer, A. C. Wells, C. H. Law, J. D. Staple, P. D. Flanner, T. M. Ralston, C. A. Brand, J. E. Dewey, P. S. McLurg, and F. M. Hodges, by Neuman, Poppenhusen, Stern & Johnston, Solicitors for Said Defendants. Newman, Poppenhusen, Stern & Johnston, Travis, Merrick, Warner & Johnson, Solicitors for the Defendants.

[fol. 82]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION TO TAKE DEPOSITIONS—Filed Oct. 19, 1923

The plaintiff and the defendants in the above-entitled cause, by their respective solicitors, do hereby stipulate and agree as follows:

I

(a) That authority is hereby given the plaintiff to take the depositions of such witnesses as it may desire upon giving Newman, Poppenhusen, Stern & Johnston, 1615 Lumber Exchange Building, Chicago, Illinois, solicitors for the defendants, not less than five days' notice by telegram for each five hundred miles distance by railroad between Chicago, Illinois, and the place where such depositions are to be taken.

(b) That authority is hereby given the defendants to take the depositions of such witnesses as they may desire by giving the Attorney General not less than five days notice by telegram for each five hundred miles distance by railroad between Washington, D. C., and the place where such depositions are to be taken.

Provided, however, that the aforesaid notice of taking depositions shall not be required in case the time and place therefor are agreed upon by counsel for both parties.

(c) That the telegraphic notices given pursuant to this stipulation shall inform the recipient of the State and the city or the town in such State, as well as the place in such city or town, where, and the time when, such depositions will be taken. The filing of such notices for transmission with the Western Union Telegraph Company, or Postal Telegraph Cable Company, and the posting on the same day of letters confirming said telegraphic notices shall be conclusive proof that notice has been given of the taking of depositions pursuant to this stipulation.

II

That the witnesses whose depositions are taken pursuant to this [fol. 83] stipulation shall first be duly sworn by some person who is authorized to administer oaths by the State or Federal laws where such witnesses are examined, and that the testimony of such witnesses shall be taken by a stenographic court reporter, or some other competent person, who shall reduce or cause to be reduced to longhand, or typewriting, the testimony so taken, and that such stenographic court reporter, or other person, shall have the same power to take such depositions and certify them as if he had been duly appointed Special Commissioner or Examiner by the Court wherein the above-entitled cause is now pending to take such depositions.

III

That unless otherwise stipulated in writing when the depositions are taken, all depositions taken pursuant to this stipulation and agreement shall be signed by the person giving them and certified by the stenographic court reporter or other person taking said depositions. That all depositions taken pursuant to this stipulation and agreement shall be transmitted by mail to the Clerk of the District Court of the United States for the Western District of Michigan, at Grand Rapids, Michigan, where they shall be filed in said cause and immediately published by the Court without notice.

IV

That the party giving notice pursuant to this stipulation and agreement for the taking of depositions of witnesses shall pay the expenses of taking the same and shall furnish the other party free of charge with a copy of such depositions, subject, however, to such expense incident to taking depositions by the Government being charged as a part of the costs of the cause should the Government prevail in the litigation; and provided that copies of numerous or voluminous exhibits need not be furnished said party at the expense of the party giving the notice. That the parties and their solicitors shall, however, pay their own traveling expenses, hotel bills and all other like or similar expenses.

V

That all depositions taken in conformity with the provisions of this stipulation and agreement may be used upon the trial of said cause, or upon any hearing before a Master in Chancery, or other person designated by the Court, in case said cause, or any part [fol. 84] thereof, be referred to a Master or other person by the Court, by either party, and shall be received in evidence and shall be entitled to the same force and effect as if they had been duly and regularly taken under and pursuant to the statutes in such case made and provided, and as if all the rules of court had been complied with and an order of court for the taking of such depositions had been duly and regularly made and entered in the above-entitled cause.

That the parties to the above-entitled cause do hereby expressly waive any and all objections which might be urged by either of them on account of the failure of the other to comply with any rules of court, or any statutes or rules of practice relating to depositions, or on account of the absence of any order of the court providing for the taking of the depositions in this cause.

C. Stanley Thompson, Special Assistant to the Attorney General. Newman, Poppenhusen, Stern & Johnston, Solicitors for the Defendants.

[fol. 85] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION FOR A CONTINUANCE—Filed November 8, 1923

Come now the Defendants in the above entitled cause, and each of them, by their solicitors, Travis, Merrick, Warner and Johnson, and Newman, Poppenhusen, Stern & Johnston, and move this Honorable Court that the order setting the above cause down for hearing for November 26, 1923, be vacated and that said cause be continued to a date which will allow the said Defendants, and each of them, to prepare for a hearing of said cause. This motion is based upon the files, records and proceedings herein and the affidavit of Henry J. Darby hereto attached and made a part hereof.

Newman, Poppenhusen, Stern & Johnston, Travis, Merrick,
Warner & Johnson, Solicitors for Defendants.

[fol. 86] STATE OF MICHIGAN,
County of Kent, ss:

AFFIDAVIT OF HENRY J. DARBY

Henry J. Darby, being first duly sworn, on oath deposes and says that he is associated with the firm of Newman, Poppenhusen, Stern & Johnston, of Chicago, Illinois, solicitors for the Defendants in Equity Cause No. 1979, wherein the United States of America is the Plaintiff and the Maple Flooring Manufacturers' Association, et al., are the Defendants, which said cause is now pending in the District Court of the United States for the Western District of Michigan.

That he is a member of the bar of the State of Illinois and of the District Court of the United States, Eastern District of Michigan.

That sometime during the summer of 1923, upon the denial of certain motions made by the Defendants, the Honorable Judge Sessions set the said cause down for hearing on November 12, 1923, and stated in open court to the solicitors for the respective parties, that he would, under no circumstances, consider any motions for a postponement or continuance, and that said cause must be heard on November 12, 1923.

That thereafter, the solicitors for the Plaintiff in said cause moved for a continuance and the said motion was granted by the Judge of said court and the cause was set down for hearing on November 26, 1923.

That the solicitors for the Defendants have been diligent in the preparation for hearing in said cause and during the latter part of October depositions were taken in the City of Chicago pursuant to

stipulation by the solicitors for the respective parties to said cause. [fol. 87] That while the depositions were being taken, said affiant and Mr. Jacob Newman, of the firm of Newman, Poppenhusen, Stern & Johnston, informed Mr. C. Stanley Thompson, special assistant to the Attorney General of the United States and of counsel for the Plaintiff in said cause, that the solicitors for the Defendants had collected a great mass of data but had not been able to confer personally with all their clients in order to prepare for the hearing of said cause, but that schedules for appointments would shortly thereafter be made and that they intended to spend the major portion of November, prior to the 26th day thereof, in a series of conferences at Chicago, Illinois, with their clients in order to prepare for the hearing of said cause.

That thereafter, affiant and Mr. George W. Kechn, Secretary of the Maple Flooring Manufacturers' Association, prepared schedules for the Defendants in said cause to appear in Chicago for the purpose of consulting with their solicitors and preparing for a hearing in said cause.

That the first of said hearings was arranged for Wednesday, November 7, 1923. That shortly before said date several of the Defendants in said cause, or their officers, employees or representatives, were served with subpoenas, duces tecum, to appear before the Federal Grand Jury at Grand Rapids, Michigan, on the 9th day of November, 1923, then and there to testify on behalf of the United States before the Grand Jury, and not to depart without leave. That said subpoenas, duces tecum, required the Defendants also to then and there bring with them the following files and records:

[fol. 88] Complete files from January 1, 1913, to date of the following material issued by or through or pertaining to the Maple Flooring Manufacturers Association as now existing, and any such Association existing during the period mentioned:

Articles or contracts of association.

Minimum price plans or basis.

Monthly, semi-annual and annual market conditions committee reports.

Monthly allotment statements.

Semi-annual and annual allotment contract fund statements.

Annual and semi-annual Secretary's reports.

Minutes or memoranda of general, special, annual and semi-annual association meetings.

Minutes or memoranda of market conditions committee meetings.

Semi-annual and annual special fund reports.

Monthly reports of Flooring Manufacturing information.

Monthly reports of current net values.

Monthly reports of average prices realized.

Quotations reports.

Reports of results of test runs.

Surveys of costs.

Tables of values and concessions sheets.

Delivered cost charts.

Freight rate books.

Records of completed transactions.

Circular letters or Secretary's letters to members.

All correspondence, letters and telegrams sent to or received from the officers, members of market conditions committee and members of said Association or Associations dealing with any of the following subjects:

Association meetings and activities.

Market conditions committee, meetings and activities.

Statistics and statistical reports.

Minimum price plans.

Articles of association.

Allotments.

Surveys of costs.

Test runs.

Weekly sales reports.

Tables of values and concessions.

Registering of wholesalers and commission men.

Trade conditions.

Curtailment of production.

Stocks on hand.

Prices charged or to be charged, and quotations.

Interchange of quotations.

That affiant was informed that all the other corporation Defendants in said cause, or some of their agents, officers or representatives, would be likewise subpoenaed, and affiant was informed by the Honorable Edward J. Bowman, District Attorney for the United States for the Western District of Michigan, that a subpoena, duces tecum, of the same character as those above-mentioned had been issued for [fol. 89] said affiant and that affiant, as one of the solicitors for the Defendants in said cause would be required to appear before the Grand Jury at Grand Rapids and produce all files in his possession which relate to the matters above mentioned.

That the solicitors for the Defendants have collected since the institution of the suit, data from their clients; that said data was received by them in their capacity as solicitors and for the sole purpose of enabling them to prepare for a hearing in said cause and to be able to advise their clients as to the law and to see that their rights were adequately protected.

The subpoenas, duces tecum, that have been issued and served, and those that will hereafter be served upon the Defendants, their agents, officers or employees, have prevented and will prevent the Defendants and their solicitors from making an adequate preparation for the hearing in said cause.

That Defendant, Maple Flooring Manufacturers Association in composed of some twenty-two firms and corporations located in the States of Michigan, Minnesota, Wisconsin, Illinois and New York, and that besides the firms and corporations who are made Defendants to the petition in said cause, there are twenty-four officers or representatives of said firms and corporations who have been made

parties defendant in said cause, many of whom have been served with subpoenas, duces tecum; that affiant has been informed that several others of said individual Defendants will likewise be served with subpoenas, duces tecum.

That the Honorable A. T. Seymour, Assistant to the Attorney General of the United States, and of counsel for the Plaintiff in said cause, demanded of Newman, Poppenhusen, Stern & Johnston, as solicitors for the Defendants, the physical possession of all files, documents and other data that the said solicitors had received from [fol. 90] their clients in order to ascertain the facts and to be in a position to advise their clients as to the law, and to represent them on the hearing of said cause. That the Honorable A. T. Seymour informed said firm of solicitors that unless his said demand was complied with he would take other steps to procure the information that he desired. That within a week or ten days after the ultimatum above mentioned, the subpoenas, duces tecum, above mentioned were issued.

That ny reason of the foregoing facts it will be impossible for the Defendants to prepare for a hearing of said cause and to adequately protect the legal and constitutional rights of their clients, and that if forced to go to a hearing on November 26, 1923, the said Defendants, and each of them, will be deprived of their legal and constitutional rights to adequate time within which to prepare for a hearing of said cause; that the documents mentioned in said subpoenas and the presence of said persons at Chicago are necessary to properly prepare the defendants' defense to the petition in said cause.

Henry J. Darby.

Notary's certificate omitted.

[fol. 91]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING CONTINUANCE—Nov. 8, 1923

The motion of said defendants for a continuance in this cause came on this day to be heard and was argued by counsel for the respective parties; and thereupon it is ordered that said motion be and it hereby is denied.

[fol. 92]

IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION—Filed December 19, 1923

Neither the merits nor the demerits of the Sherman Anti-Trust Act are here in issue. If, as is intimated, that statute, as hereto-

fore construed, interpreted and applied, has become antiquated, obstructive to honest progress, inconsistent with recognized and approved modern business methods, or unduly burdensome upon the industrial activities of the country, the remedy rests with the Congress and not with the Courts. The sole question here presented for consideration and determination is whether the agreements of these defendants, or the methods and practices by and through which these agreements are performed and carried into effect have a necessary tendency to cause a direct and undue restraint of intrastate trade or commerce. As is said in *American Column Co. vs. United States*, 257 U. S. 377-399:

[fol. 93] "Obviously the organization of the defendants constitutes a combination and confessedly they are engaged in a large way in the transportation and sale of lumber (flooring) in interstate commerce so that there remains for decision only the question whether the system of doing business adopted resulted in that direct and undue restraint of interstate commerce which is condemned by this Anti-Trust statute."

Both the oral testimony and the documentary evidence in this case are very voluminous; but the basic and controlling facts are not much in dispute. There is, however, the widest possible divergence of inferences, deductions and conclusions sought to be drawn from such facts. These differences may be thus summarized:

On the part of the plaintiff it is claimed that, (1) The organization of defendants has been in existence many years without material change in form or character and its purposes and objects cannot be discovered nor correctly determined without a study of its previous history and activities as well as its present conduct; (2) The primary object and purpose of this combination has been at all times and is now to control the production and prices of maple, beech and birch flooring and thus to limit competition and unduly to restrain trade in that product, all other purposes and objects being either subordinate or incidental; (3) The efforts of defendant have been successful in large measure and have resulted in a material [fol. 94] reduction of competition, a practical control of production, and at least a partial fixation of prices and, hence, an unlawful restraint of trade in the maple flooring industry; and (4) The relief which should be granted is an injunction restraining the defendants from continuing the present Association or organizing, creating, or entering into another combination of similar nature and character.

In behalf of defendants the opposing contentions are: (1) The present Association is a new and independent one, quite different in character and purpose from those preceding it, and should be approved or condemned solely because of its own actions and conduct and not because of any misconduct of its predecessors; (2) The purposes and objects of the present Association are not only lawful but commendable and consist mainly in an attempt to increase the use and consumption of maple, beech and birch flooring by extensive advertising and by the standardization and betterment of

such product, the settlement of disputes by the maintenance of an inspection service, and the collection, compilation, exchange and distribution of legitimate statistical information, all for the benefit and to the advantage of the manufacturer, the dealer and the consumer alike; (3) The efforts of the defendants along the lines above indicated have not resulted in any appreciable lessening of competition, control of production or increase or fixation of prices; and, (4) The actions and conduct of the Association and its members should not be condemned as a whole, but, either plaintiff's petition should be dismissed, or only the objectionable features and methods, if any, [fol. 95] of defendants' plan and operations should be enjoined.

A detailed recital of facts is both unnecessary and impractical. Therefore, a brief discussion of the antagonistic claims of the parties and as concise a statement of the conclusions reached as reasonable clearness and a due regard for the importance of the subjects will permit is all that will be attempted.

The first inquiry pertains to the relationship between the present organization and its predecessors and the connection between the earlier and later plans and methods of operation. From the beginning the name of the Association has remained unchanged. There has been no break in continuity of organization or activities. Each agreement constituting its Articles of Association and each amendment thereof has been signed and executed before the expiration of the old. The present Articles were executed in March or April, 1922, and dated back to January 1, 1922, but the next preceding Articles would not have expired by their terms until July 1, 1922. The membership has been fairly constant. Fifteen of the twenty-one present members have belonged to the Association for upwards of ten years. The chief executive officer of the organization is its secretary and the same person has held that position and shaped the course of its activities for many years. The conclusion is irresistible that this combination has been single and continuous and that a study and examination of its past history as well as its im- [fol. 96] mediate agreements and doings is necessary in order to reach a full and fair comprehension of its present purposes and objects. }

There is no longer room for controversy as to the meaning and purpose of the Sherman Act. In *American Column Co. vs. United States*, *Supra.*, at page 400, it is said:

"It has been repeatedly held by this court that the purpose of the statute is to maintain free competition in interstate commerce and that any concerted action by any combination of men or corporations to cause, or which in fact does cause, direct and undue restraint of competition is such commerce falls within the condemnation of the act and is unlawful."

The rule by which the legality of combinations like the Maple Flooring Manufacturers Association, operating under an "Open Competition" plan or system, must be tested, has also been clearly defined and settled by the Supreme Court. The latest pronounce-

ment of that Court is found in the case of United States vs. American Oil Co., 262 U. S. 371-390:

"We are not called upon to say just when or how far competitors may reveal to each other the details of their affairs. In the absence of a purpose to monopolize or the compulsion that results from contract or agreement, the individual certainly may exercise great freedom; but concerted action through combination presents a wholly different problem and is forbidden when the necessary tendency is [fol. 97] to destroy the kind of competition to which the public has long looked for protection."

Applying the rules thus announced: Does the conduct, past and present, of the defendants indicate a purpose to monopolize the maple, beech and birch flooring industry? Do the present Articles of this Association, either in and by their own force and terms or when viewed in the light of prior agreements of like nature, exert a pressure or compulsion toward the control of production and prices? Does the plan or system followed and pursued by defendants in their operations have a direct and necessary tendency to destroy the kind of competition to which the public has a right to look for protection and which the Congress intended to preserve in and by the enactment of the Sherman Anti-Trust Act? The decision of this case depends and hinges upon the answers to be given to these questions.

At the outset, we may assume that the efforts of these defendants directed along the lines of advertising, standardizing and inspection of their product, when considered in any by themselves, have been lawful and permissible. But, since January 1, 1922, these matters, in comparison with the other activities of the Association and its members, have been of minor importance. No new advertising campaign has been commenced or conducted and no change has been made in grades and sizes of the product or in the rules of inspection.

Articles of Association, if any, adopted and in force during the years from 1895 to 1912 inclusive, have not been introduced in evidence. It has been stated in argument and probably is shown [fol. 98] by the record that during these years unsuccessful attempts were made to fix and maintain definite and specific prices at which maple, beech and birch flooring was to be sold. The Articles of this Association in force during the years 1913 to 1923 inclusive are in the record and afford and yield indisputable evidence of the primary purposes of the organization. Embodied in the Articles of January 1, 1913, is the so-called "Allotment Plan". This plan was continued in force and operation until after the decision of the lower court in the Hardwood case in March, 1920. This plan is best described by quoting from the Articles themselves: "For the purpose of securing moneys for the General Fund, an assessment of three dollars per thousand feet shall be levied each month on all shipments during that month in excess of the allotted percentage set opposite the signature of each member. From this General Fund

each member who has shipped during that month less than his allotted percentage shall be paid three dollars per thousand feet on the quantity under-shipped down to 75% of his allotment for that month." Then follow provisions for a final adjustment of accounts at the end of each fiscal year and for the imposition of penalties upon any member failing to pay his assessments. It is apparent that by this plan competition among the members of the Association was practically eliminated.

On July 1, 1916, the Articles of Association were amended by the adoption of a "Minimum Price Plan" which continued in effect until about January 1, 1921. This plan required the establishment of minimum prices for the sale of maple, beech and birch flooring [fol. 99] by the members of the Association, such prices to consist of the average cost and expense of manufacturing and selling the product (including the market value of raw material, interest on capital invested, allowances for depreciation of plant and usual overhead charges) plus an average net profit of ten percent. Drastic penalties were provided for the sale of flooring by any member at less than the minimum prices so established. Here again, the effect of this agreement in limiting and controlling prices and in suppressing competition is apparent.

On January 1, 1921, the defendants, by agreement, established a "Minimum Price Basis" for the sale of their flooring during the period from January 6, 1921 to July 1, 1922. The only substantial differences between this agreement and the preceding one creating the "Minimum Price Plan" were the reduction of the average net profits to be obtained from ten percent to five percent and the abolishment of penalties for violations. Defendants claim that this plan was abandoned after a few weeks trial upon the receipt of a very pointed suggestion from the Department of Justice that it was in violation of the Anti-Trust statute.

Confessedly, each of the agreements above mentioned relating to prices for the sale of flooring falls within the ban of the statute. Soon after the decision of the Supreme Court in the Hardwood case and apparently because of that decision, the present Articles of Association were adopted. In express terms, this contract does not establish minimum prices; but it does set forth that "The sound business principle * * * that manufacturers should carefully consider the question of cost in manufacturing and selling their product is recognized by the Association as the only scientific method of conducting the business of manufacturing and marketing Maple, Beech and Birch Flooring", and it does provide means for ascertaining and furnishing to the members of the Association full and complete information relative to the "Average Cost" of manufacturing and marketing such flooring. The "fundamental elements" entering into and determining such average cost are declared to be the same as those set forth in the previous "Minimum Price Plan" and "Minimum Price Basis" agreements. Thus, by the simple process of adding together the "Average Cost" of the product, so ascertained and furnished, and the customary percentage of average

*Assumption
continuing*

net profits, each member of the Association, taught by long experience and example, is enabled to, and undoubtedly is expected to, convert the present somewhat vague and concealed price plan into the old definite but obnoxious "Minimum Price Plan".

The collection, analysis and distribution of statistical information always has been and is now a prominent and controlling part of the general scheme of this combination. Since the spring of 1922, the reports made by the individual members of the Association to its secretary and those made by him to the members, collectively and individually, have been more voluminous and in greater detail than ever before. In substance, this reporting system is the "Open Competition Plan" which was considered and discussed in the Hardwood and Linseed Oil cases. At present, each member of the Association is required to "send to the Secretary promptly at the end of each [fol. 101] week a report of all sales made during that week of Maple, Beech and Birch flooring", stating the "quantity, kind and grade of flooring sold, the delivered price sold at, the average freight rate to destination of shipment, and the commissions paid, if any". Each member is also required to make monthly reports showing stocks on hand and unfilled orders on hand at the end of the previous month; the amount in feet of shipments made (except flooring purchased from other members of the Association), mill production, new orders booked and the "average prices realized F. O. B. flooring plant" for flooring sold during the previous month. Quarterly reports of manufacturing and marketing costs per thousand feet of flooring are likewise made.

The Secretary of the defendant Association receives, analyzes and combines these reports received by him and in turn prepares therefrom and distributes to the members of the Association weekly, monthly, quarterly, semi-annual and annual reports containing statistical information covering in minute detail every phase and feature of the Maple, Beech and Birch flooring industry as conducted by such members. His weekly reports show every sale made during the preceding week with the date of sale, the quantity and description (dimension and grade) of flooring sold, the delivered price, the average freight rate, the commissions paid, if any, and the index number of the mill making the sale. (Since July 19, 1923, the index numbers of the mills have been omitted and group sales have been reported). The monthly reports contain full and complete data as to stocks on hand, unfilled orders, shipments, [fol. 102] production, new business booked, average values, average prices realized by each member. (Since July 1923, by each group of members,) with totals for all members and with elaborate comparative tables and a so-called "Barometer" showing the changes in trade conditions and in these statistical data from month to month and year to year. The quarterly reports show average manufacturing and marketing costs compiled and derived from "surveys of costs," "test runs" and average freight rates. The semi-annual and annual reports consist largely of a comprehensive review and combination of the weekly, monthly and quarterly reports together with corresponding tables of comparison.

group information

9 The reporting system created and practiced by these defendants is, in itself, a bar to genuine competition. Business rivals do not disclose to each other the minute details of their transactions unless such disclosure is made for some ulterior and unworthy purpose.

An important feature of defendants' system has been the compilation and distribution of "Rate Books" and "Tables of Values" showing the freight rates from Cadillac, Michigan, to upwards of four thousand cities and towns in different parts of the United States and delivered values of flooring based upon such freight rates and the average cost of production. Defendants emphatically deny that these books have been used for any purpose other than as a convenient means for quickly ascertaining freight rates upon which to base quotations of delivered prices. It may be true that, at the present time these books are used merely as handy reference tables of freight rates, but, prior to August 2, 1923, when the members of the Association were instructed to remove the tables of values from these books, they were designed and intended to be, and were in fact, an essential factor in fixing minimum prices at which flooring could be sold. [In the "Minimum Price Plan" and "Minimum Price Basis" agreements, we find the following express declaration of the use and purpose of these rate books and tables of values:] "For Maple, Beech and Birch Flooring, Clear, No. 1, and Factory standard grades and lengths, the said Minimum Prices (Minimum Price Basis) shall be the delivered prices (values) in the Table of Values of May 15, 1916 (January 6, 1921), in the Association Rate Book and Index of Towns."

*price
fixed
compulsory*

During the years 1922 and 1923 meetings of the Association and its committees have been held more frequently than in former years. Notwithstanding the positive testimony of several witnesses to the effect that, at these meetings, the conferences and discussions have been confined to "past and completed transactions," it is a heavy tax upon one's credulity to be compelled to believe that these progressive business men have traveled long distances at large expense to attend these meetings, and, while there, have always been looking backward and have carefully avoided, in both conversation and discussion, all reference to the highly important subjects of present trade conditions and future trade outlook.

A helpful sidelight upon the motives which have actuated these defendants in their Association dealings is the fact that nearly every [fol. 104] modification of their agreements or change in their methods or plans has followed a decision of the courts in a case involving the construction and interpretation of the Anti-Trust statute. As each successive opinion has been handed down, these defendants, pursuant to legal advice, have been compelled to shift their position and, in form, to abandon, or more thoroughly to disguise and conceal some obviously unlawful practice. This is the course of conduct usually pursued by those who desire and intend to go as far as possible in the wrong direction and still keep "within the law" and which oftentimes leads into trouble.

During the last few years, the members of this Association have

manufactured and sold more than seventy percent of the total amount of maple, beech and birch flooring produced in the United States and have dominated and, to a very large extent, controlled the industry. Upon this record, it cannot be doubted that they have exercised their power wrongfully and that their agreements and the methods employed by them have had, at all times, a compelling tendency to impede the operation of the economic laws of supply and demand, to increase prices and to stifle competition.

In view of the inherent illegality of the plans and contracts of the defendants as well as their actions in the execution and performance thereof, the actual results flowing from such plans, agreements and the execution and performance thereof are of secondary importance. Besides, no method has been discovered and probably none can be discovered by which to measure either accurately or even approximately the effect of the agreements and doings of these defendants [fol. 105] upon prices, production and competition in the maple, beech and birch flooring industry, for the reason that there are no satisfactory standards of comparison. This Association has been in active operation since the infancy of the industry and, therefore, it is impossible to compare conditions existing before and after its organization. In recent years, nearly every branch of the lumber and flooring business has been highly organized and has been operating under a plan somewhat similar to the plans of this Association. Some of these plans have been condemned by the courts and the validity of others is now being questioned and challenged. When we enter the great field of general industrial and commercial activities each industry is found to have its own peculiar conditions and environment and here comparisons are of little or no value. The elaborate defense interposed upon this branch of the controversy is believed to make this case unique in Anti-Trust litigation. But while the testimony of a large number of witnesses and the illustrative charts which have been exhibited tend to show that the trend of prices, production and conditions in the maple flooring business has been in the same general direction as like trends in other kinds of business, this fact does not greatly assist in the solution of the problem here presented. It is probable that a monopoly, whether partial or complete, may be successful in elevating price levels and in impairing or destroying competition, but every industry is so dependent upon and intertwined with others that the trends of prices and market conditions necessarily must be in the same general direction in all. While the evidence shows that, at all times, there has been [fol. 106] some spread in the prices demanded and obtained by the different members of this Association, it also shows that both quoted and accepted prices have rarely been below those fixed in the earlier "Minimum Price" plans and suggested in the later "Average Cost" plan. The evidence also indicates that somewhat lower prices have usually been quoted by non-members than by members of the Association. It must be confessed, however, that these and other indicia are neither very satisfactory nor conclusive.

One is not likely to sell at less
than his own } or his competitors
cost =

There remains the question of relief to be granted. The contention of defendants that the relief, if any, which should be granted, must be confined to an injunction against the specific transactions which may be found to be objectionable, cannot be sustained. If this were a proceeding against a corporation owning and controlling large properties or operating a public utility a very different situation would be presented. The present Articles of this Association contain an express covenant for the termination of the combination on the first day of January, 1925, and provide for the distribution of its money and property among its members at that time. No injury to property or property rights can result from its earlier dissolution. Moreover, the evidence in this case shows clearly that the fundamental and primary purposes and objects of this combination are unlawful and relief short of terminating its existence and restraining the defendants from entering into other agreements or combinations [fol. 107] of like character would be insufficient and inadequate.

A decree will be entered accordingly.

C. W. Sessions, District Judge.

Dated December 19, 1923.

[fol. 108] IN UNITED STATES DISTRICT COURT

[Title omitted]

DECREE—Filed and entered January 4, 1924

This cause came on to be heard at this term, and the Court having considered the evidence and having heard arguments of counsel and being fully advised in the premises, it is hereby ordered, adjudged and decreed as follows:

1. That the contract or articles of association under which defendants are now operating, under the name of the Maple Flooring Manufacturers Association, and the activities thereunder as alleged in the original bill and proved on the hearing constitute a combination in restraint of interstate trade and commerce in violation of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," known as the Sherman Anti-Trust Act.

2. That the defendants and their officers, agents, servants and employees and all persons acting under, by or in behalf of them or any of them, are hereby ordered and directed to dissolve and to forever discontinue defendant Maple Flooring Manufacturers Association, and they are perpetually enjoined, restrained and prohibited from forming or engaging in any like association; and from entering into any express or implied agreement or articles of association or minimum price plan or minimum price basis or any arrangement similar to and having a like purpose as said agreements or articles of association or minimum price plans or minimum price bases described in the petition herein and shown in the proof.

3. That the defendants, their officers, agents, servants and employees and all persons acting under, through or in behalf of them or any of them, are hereby perpetually enjoined, restrained and prohibited from combining, conspiring or agreeing to do any of the following acts:

(a). To fix in any manner whatsoever or to maintain uniform or non-competitive f. o. b. factory or delivered prices for the maple, beech or birch flooring sold by them, or to increase or diminish such prices, or to do any act or acts having the purpose or effect of establishing or maintaining such uniform or non-competitive prices, [fol. 109] or increasing or diminishing such prices;

(b). To fix in any manner whatsoever, or to maintain, uniform minimum prices or average costs for maple, birch or beech flooring, or the elements to be considered as entering into and determining said minimum prices or average costs, or to do any act or acts having the purpose or effect of establishing or maintaining uniform minimum prices or average costs for use as common bases in establishing prices;

(c). To make reports to a central collective agency or agencies or to receive reports from a central collective agency or agencies such as or similar to the reports described in subdivision five of paragraph five of the petition herein (and proven by the evidence) to be used as a means of controlling or fixing prices or in any manner affecting the production of maple, beech or birch flooring, or to be used as a means of fixing or controlling or increasing or diminishing prices of maple, beech or birch flooring, or to be used as a means of controlling or otherwise affecting the production of such flooring;

(d). To do any act or acts having the purpose or effect of causing or enabling them or any of them to establish or maintain uniform or non-competitive prices or to increase or diminish such prices or to maintain uniform policies as to prices and sales;

(e). To compile, publish or use freight rate books containing all or any of the following matters: average cost charts of the principal items of maple, beech or birch flooring, tables of differentials for the determining of the average costs of other kinds of maple, beech or birch flooring, delivered cost charts showing the average cost of any item of maple, beech or birch flooring when delivered at any destination;

Provided, however, that nothing contained in this decree shall be construed as prohibiting any defendant from doing or performing any of the foregoing acts or from selecting his or its own trade and from disposing of his or its own products to such persons or on such terms as it may choose, if done individually and without combining, conspiring or agreeing with any other defendant or with any other manufacturer of maple, beech and birch flooring.

4. That the petitioner shall have and recover from the defendants its costs.

January 4, 1924.

C. W. Sessions, District Judge.

[Title omitted]

PETITION FOR APPEAL—Filed January 4, 1924

To the Honorable Clarence W. Sessions, Judge in said Court and cause presiding:

And now come Maple Flooring Manufacturers Association, a voluntary Association, W. D. Young & Company, Mitchell Brothers Company, Wisconsin Land & Lumber Co., Cobbs & Mitchell, Inc., I. Stephenson Co., Trustees, Cummer-Diggins Co., Osgood & Blodgett Mfg. Co., Holt Hardwood Company, Kerry & Hanson Flooring Company, East Jordan Lumber Co., Nichols & Cox Lumber Co., Strable Lumber & Salt Co., Foster-Latimer Lumber Co., West Michigan Flooring Co., J. W. Wells Lumber Co., Northwestern Cooperage & Lumber Co., Flanner-Steger Land & Lumber Co., Grand Rapids Trust Company, as Receiver for William Horner, North Branch Flooring Company, The Bigelow Cooper Co., Kneeland-McLurg Lumber Co., Oval Wood Dish Corporation, George W. Keehn, B. P. Whedon, M. E. Thomas, H. H. Shepeck, J. L. Colby, F. S. Blodgett, W. L. De Witt, F. R. Welsh, J. J. Porter, F. E. Holland, George Strable, H. I. Latimer, Edwin Vollmer, W. H. Greene, Mary Vollmer, A. C. Wells, C. H. Law, J. D. Staple, P. D. Flanner, T. M. Ralston, C. A. Brand, J. E. Dewey and F. M. Hodges, defendants herein, by Newman, Poppenhusen, Stern & Johnston and Travis, Merrick, Warner & Johnson, their attorneys, and feeling themselves aggrieved by the final decree of this Court entered herein on the 4th day of January, 1924, hereby pray that an appeal may be allowed to the said defendants from the said decree to the Supreme Court of the United States, for the reasons specified in the Assignment of Errors which is filed herewith, and that a complete transcript of the record, proceedings and evidence upon which said decree is based, duly authenticated, may be sent to the Clerk of the Supreme Court of the United States; that the amount of the appeal bond and the time for filing the same may be fixed, and that the time for the presentation and filing of a certificate of evidence may be fixed and determined.

And said defendants further represent that the evidence presented upon the hearing of said cause is voluminous and includes several hundred separate documents and papers introduced as exhibits, and that it will require approximately ninety (90) days for the preparation of a certificate of evidence and transcript of the record.

Wherefore these defendants pray that the time of the defendants within which to file a complete transcript of the record with the Clerk of the Supreme Court of the United States and to docket said cause in said Court be extended to the first day of June, A. D. 1924.

And said defendants further represent that if the said decree stands in full force and effect until said appeal is heard and decided by said Supreme Court of the United States, the said defendants will

suffer great and irreparable injury, as will more fully appear from the evidence adduced in said cause and from the affidavit of George W. Keehn submitted herewith. Wherefore said defendants further [fol. 111] pray that this Court exercise the discretion conferred upon it by Equity Rule 74 and enter an order herein, suspending the operation and effect of said decree during the pendency of said appeal, upon such terms as to bond, or otherwise, as this Court may consider meet and proper. And these defendants will ever pray.

Maple Flooring Manufacturers Association, W. D. Young & Company, Mitchell Brothers Company, Wisconsin Land & Lumber Co., Cobbs & Mitchell, Inc., I. Stephenson Company, Trustees, Cummer-Diggins Company, Osgood & Blodgett Mfg. Co., Holt Hardwood Company, Kerry & Hanson Flooring Company, East Jordan Lumber Co., Nichols & Cox Lumber Co., Strable Lumber & Salt Co., Foster-Latimer Lumber Co., West Michigan Flooring Co., J. W. Wells Lumber Co., Northwestern Cooperage & Lumber Co., Flanner-Steger Land & Lumber Co., Grand Rapids Trust Company, as Receiver for William Horner, North Branch Flooring Company, The Bigelow-Cooper Co., Kneeland-McLurg Lumber Co., Oval Wood Dish Corporation, George W. Keehn, B. P. Whedon, M. E. Thomas, H. H. Sheteck, J. L. Colby, F. S. Blodgett, W. L. De Witt, F. R. Welsh, J. J. Porter, F. E. Holland, George Strable, H. I. Latimer, Edwin Vollmer, W. H. Greene, Marv Vollmer, A. C. Wells, C. H. Law, J. D. Staple, P. D. Flanner, T. M. Ralston, C. A. Brand, J. E. Dewey, and F. M. Hodges, by Newman, Poppenhusen, Stern & Johnston, Travis, Merri-ck, Warner & Johnson, Their Attorneys.

[fol. 112] DISTRICT COURT OF THE UNITED STATES

[Title omitted]

Order Allowing Appeal, Fixing the Time for Filing Certificate of Evidence, etc.—Filed January 4, 1924

This matter having come on to be heard in open Court upon the petition of Maple Flooring Manufacturers Association et al., defendants herein, for an appeal from the final decree of the Court entered herein on the 4th day of January, A. D. 1924, to the Supreme Court of the United States, and for the extension of time within which to present and file a certificate of evidence and to file a complete transcript of the record with the Clerk of the Supreme Court of the United States, and it appearing to the Court that all parties in interest are present, or are represented in Court.

It is ordered, adjudged and decreed, that said appeal be and the same hereby is allowed, upon the said defendants filing their appeal bond herein in the sum of ten thousand dollars within five (5) days, with surety to be approved by the Court.

It is further ordered, adjudged and decreed, That said defendants present and file a certificate of evidence, prepared in accordance with Equity Rule 75, on or before the 15th day of March, A. D. 1924, and that the time of said defendants within which to file a complete transcript of the record with the Clerk of the Supreme Court of the United States and to docket said cause in said Court be extended, good cause therefor having been shown to the Court, up to and including the 15th day of April, A. D. 1924.

It is further ordered, adjudged and decreed That in accordance with the prayer of the defendants' petition and pursuant to Rule 74 of the Equity Rules, the permanent injunction this day granted is hereby suspended until the 1st day of January, 1925, unless the appeal of the defendants this day allowed to the Supreme Court of the United States be determined by said Court prior to that date, upon said defendants filing herein said appeal bond in the form prescribed by statute in the penal sum of Ten Thousand Dollars (\$10,000) with surety to be approved by the Court.

Entered.

(Signed) C. W. Sessions, Judge.

Dated January 4, 1924.

[fol. 113] DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER DISMISSING BILL AS TO G. W. EARLE AND PERCY S. MCLURG—Filed and entered January 4, 1924

It having been shown to the Court that two of the defendants herein, G. W. Earle and Percy S. McLurg, have died pending the hearing of this cause, it is on motion of defendants ordered, adjudged and decreed, that the petition herein be and the same hereby is dismissed as to said defendants, G. W. Earle and Percy S. McLurg.

Dated January 4, 1924.

Enter.

C. W. Sessions, Judge.

[fol. 114] DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed January 4, 1924

And now come Maple Flooring Manufacturers Association, a voluntary Association, W. D. Young & Company, Mitchell Brothers Company, Wisconsin Land & Lumber Co., Cobbs & Mitchell, Inc., I. Stephenson Co., Trustees, Cummer-Diggins Co., Osgood & Blodgett Mfg. Co., Holt Hardwood Company, Kerry & Hanson Flooring Company, East Jordan Lumber Co., Nichols & Cox Lumber Co., Strable Lumber & Salt Co., Foster-Latimer Lumber Co., West Michi-

gan Flooring Co., J. W. Wells Lumber Co., Northwestern Cooperage & Lumber Co., Flanner-Steger Land & Lumber Co., Grand Rapids Trust Company, as Receiver for William Horner, North Branch Flooring Company, The Bigelow Cooper Co., Kneeland-McLurg Lumber Co., Oval Wood Dish Corporation, George W. Keehn, B. P. Whedon, M. E. Thomas, H. H. Shepeck, J. L. Colby, F. S. Blodgett, W. L. DeWitt, F. R. Welsh, J. J. Porter, F. E. Holland, George Strable, H. I. Latimer, Edwin Vollmer, W. H. Greene, Mary Vollmer, A. C. Wells, C. H. Law, J. D. Staple, P. D. Flanner, T. M. Ralston, C. A. Brand, J. E. Dewey and F. M. Hodges, defendants in the above entitled cause, by Newman, Poppenhusen, Stern & Johnston and Travis, Merriek, Warner & Johnson, their attorneys, and say that in the record and proceedings of the said Court in the above entitled cause and in the final decree made and entered therein on the 4th day of January, 1924, there is manifest error, and for error the said defendants assign the following:

1. Because the Court erred in holding "that the contract or articles of association under which the defendants are now operating under the name of the Maple Flooring Manufacturers Association, and the activities thereunder, as alleged in the original bill and proved on the hearing, constitute a combination in restraint of interstate trade and commerce in violation of the Act of Congress of July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' known as the Sherman Anti-Trust Act."

2. Because the Court erred in holding that it was proved on the hearing that the contract or articles of association under which the defendants are now operating under the name of Maple Flooring Manufacturers Association, and the activities thereunder, constitute a combination in restraint of interstate trade and commerce in violation of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," known as the Sherman Anti-Trust Act.

3. Because the Court erred in ordering and directing the defendants, their officers, agents, servants and employees, or any of [fol. 115] them, to dissolve and to forever discontinue the defendant Maple Flooring Manufacturers Association.

4. Because the Court erred in perpetually enjoining, restraining and prohibiting the defendants, their officers, agents, servants and employees, or any of them, from forming or engaging in any like association, or from entering into any express or implied agreement or articles of association, or any arrangement similar to and having a like purpose as said agreements or articles of association described in the petition and shown in the proof.

5. Because the Court erred in perpetually enjoining, restraining and prohibiting the defendants, their officers, agents, servants and employees, and all persons acting under, through or in behalf of them,

or any of them, from combining or agreeing to fix, in any manner whatsoever, the elements to be considered as entering into and determining the average costs of maple, beech or birch flooring.

6. Because the Court erred in perpetually enjoining, restraining and prohibiting the defendants, their officers, agents, servants and employes, and all persons acting under, through or in behalf of them, or any of them, from combining or agreeing to make reports to a central collective agency, or agencies, or to receive reports from a central collective agency, or agencies, such as or similar to the reports described in subdivision 5 of paragraph 5 of the plaintiff's petition.

7. Because the Court erred in holding that the evidence showed that the reports described in subdivision 5 of paragraph 5 of the plaintiff's petition were made and used by the defendants, or any of them, as a means of fixing or controlling the production or prices of maple, beech or birch flooring.

8. Because the Court erred in perpetually enjoining, restraining and prohibiting the defendants, their officers, agents, servants and employes, and all persons acting under, through or in behalf of them, or any of them, from combining or agreeing to compile, publish or use freight rate books containing all or any of the following matters: Average cost charts of the principal items of maple, beech or birch flooring, tables of differentials for the determination of the average costs of other kinds of maple, beech or birch flooring, delivered cost charts showing the average cost of any item of maple, beech or birch flooring when delivered at any destination.

10. Because the undisputed evidence showed that the prices charged for maple, beech and birch flooring by the defendants are now and always have been fair and reasonable.

11. Because the undisputed evidence showed that the members of the defendant association never fixed or maintained, or agreed to fix or maintain a practical uniformity among themselves of prices for maple, beech or birch flooring.

12. Because the undisputed evidence showed that at all times there had been free, active and vigorous competition among the defendants in the production and sale of maple, beech and birch flooring.

13. Because there was no evidence that the defendants, or any of them, at any time subsequent to January 1, 1922, ever combined, conspired or agreed to restrain, or ever attempted to or did restrain, in any manner or by any means whatsoever, interstate trade or commerce in maple, beech or birch flooring.

[fol. 116] 14. Because the Court erred in admitting in evidence, over the objection of the defendants, articles of association, minimum price plans and minimum price bases and what was done thereunder by the associations created thereby and the parties signatory thereto, all of which articles of association, plans, bases and association

activities had either never become effective or had expired and terminated or had been abandoned long prior to January 1, 1922, the date of the articles of association constituting the defendant Maple Flooring Manufacturers Association.

15. Because the Court erred in admitting in evidence, over the objection of the defendants, articles of association providing for the formation of a Maple Flooring Manufacturers Association, and fixing the duration of its existence from January 1, 1913, to January 1, 1916, and what was done thereunder, by the Association thereby created, and the parties signatory to said articles of association.

16. Because the Court erred in admitting in evidence, over the objection of the defendants, articles of association providing for the formation of a Maple Flooring Manufacturers Association, and fixing the duration of its existence from January 1, 1916 to January 1, 1919, and what was done thereunder by the Association thereby created, and the parties signatory to said articles of association.

17. Because the Court erred in admitting in evidence, over the objection of the defendants, a certain Minimum Price Plan beginning July 1, 1916, and ending November 1, 1917, and what was done thereunder by the parties thereto.

18. Because the Court erred in admitting in evidence over the objection of the defendants, a petition to the Federal Trade Commission submitted on August 27, 1915, and executed July 14, 1915, and what was done thereunder by the parties signatory thereto.

19. Because the Court erred in admitting in evidence, over the objection of the defendants, articles of association providing for the formation of a manufacturers association and fixing its duration from January 1, 1919 to July 1, 1919, and what was done thereunder by the parties signatory thereto.

20. Because the Court erred in admitting in evidence, over the objection of the defendants, articles of association providing for the formation of a Maple Flooring Manufacturers Association and fixing its duration from July 1, 1919 to July 1, 1922, and amendments thereof, and what was done thereunder by the parties signatory thereto.

21. Because the Court erred in admitting in evidence, over the objection of the defendants, the Minimum Price Bases submitted to the Department of Justice and to the Federal Trade Commission on January 29, 1921, and what was done thereunder by the parties signatory thereto.

22. Because the Court erred in denying the defendants' motion to dismiss the plaintiff's petition, on the ground that said petition did not state any matter of equity entitling the plaintiff to the relief prayed for, nor facts sufficient to constitute a valid cause of action in equity, or to entitle plaintiff to any relief against said defendants, or any of them.

[fol. 117] 23. Because the said decree entered by the Court is contrary to evidence.

24. Because the said decree is contrary to law.

25. Because the said decree is contrary to law and the weight of the evidence.

26. Because the Court erred in entering judgment for costs against the defendants.

By reason of the errors aforesaid, the said defendants pray that the said decree may be reversed.

Newman, Poppenhusen, Stern and Johnston, Travis, Merrick,
Warner & Johnson, Attorneys for said Defendants.

[fol. 118]

(Copy)

DISTRICT COURT OF THE UNITED STATES

[Title omitted]

AFFIDAVIT OF GEORGE W. KEEHN—Filed January 4, 1924

STATE OF ILLINOIS,
County of Cook, ss:

George W. Keehn, being first duly sworn, on oath, deposes and says follows:

1. That he is the Secretary of Maple Flooring Manufacturers Association, one of the defendants herein, and has since the organization of said Association on the first day of January, 1922, been in active charge of its affairs.

2. That for many years the said defendant Association, and its predecessor association, have conducted an extensive advertising campaign whereby they have advertised maple, beech and birch flooring manufactured by the members of the various associations under the trade mark MFMA; that as the result of such extensive advertising, the name of the Association, Maple Flooring Manufacturers Association, and the trade mark, MFMA, have acquired a good will value worth many thousands of dollars to the members of the Association, so that many of the large purchasers of maple, beech and birch flooring throughout the United States now insist upon the purchase of MFMA flooring, and architects specify MFMA flooring shall be used in the carrying out of building contracts under their supervision.

3. That for many years the Maple Flooring Manufacturers Associations have been engaged in standardizing the grading of maple, beech and birch flooring and have expended in the publication of

uniform grading rules and the employment of inspectors, to see that such standard grades are maintained, large sums of money; that as the result of the efforts of the Defendant Association, and its predecessors, the standards for the manufacture of maple, beech and birch flooring have now become well established and are generally accepted throughout the United States; that in order to maintain such standard grading rules, it is necessary to employ competent inspectors who will, from time to time, visit the mills of those engaged in the manufacture of maple, beech and birch flooring; to render inspection service both to the manufacturers of maple, beech and birch flooring and to the purchasers thereof, so that there may be uniform interpretation of said standard grading rules, and to settle disputes that may arise concerning the same, equitably and fairly.

4. That for many years the Defendant Association, and its predecessors, have furnished to various departments of the Government [fol. 119] ment copies of their Articles of Association and other data and information relative to the activities of said Associations, and various departments of the Government have been, for many years, familiar with the activities of said associations; that no action was taken by the Government against the Defendant Association, or its members, until the institution of the above entitled cause in March, 1923; that during all of said period the Association, and its members, by reason of the activities of said associations above referred to, have acquired a standing and reputation in the trade for fair dealing and for high quality of product.

5. That so far as affiant is advised, no member of the public, and no purchaser of maple, beech or birch flooring has ever complained of any of said Maple Flooring Manufacturers Associations, or of the activities of such association, but on the contrary many of the witnesses examined in the above entitled cause testified that the prices charged for maple, beech and birch flooring by the members of the Association were at all times fair and reasonable, and all of the witnesses examined both on behalf of the Government and on behalf of defendants testified that there at all times existed active competition among the manufacturers of maple, beech and birch flooring and a wide fluctuation in the prices charged by various manufacturers for the same grades and sizes of maple, beech and birch flooring, and that the prices for said flooring moved at all times in response to the law of supply and demand; that it further appeared from the evidence that the prices of maple, beech and birch flooring during the period from 1913 to 1923 moved in harmony with the fluctuations in the market prices of many other commodities, and particularly competing wood floorings and with the All Commodity Index Price prepared and used by the Department of Labor, Bureau of the Census.

6. That if the dissolution of the Defendant Association is required, pending the hearing of the appeal from the final decree in this cause to the Supreme Court of the United States, the good

will acquired by said Association, as the result of its operations and the operations of its predecessors, the great value acquired by said trade mark MFMA, and the benefits resulting to the manufacturers of maple, beech and birch flooring, and to the public from the maintenance of standard grade rules and inspection service will be wholly lost and dissipated to the irreparable injury and loss of the members of said Defendant Association.

And further affiant saith not.

George W. Keehn.

Subscribed and sworn to before me this 3rd day of January,
A. D. 1924. A. L. Rittenberg, Notary Public.

[fols. 120-122] APPEAL BONDS FOR \$10,000—Filed Jan. 4, 1924; approved, Sessions, J.; omitted in printing

[fol. 123] CITATION IN USUAL FORM SHOWING SERVICE ON E. J. BOWMAN—Filed Jan. 4, 1924; omitted in printing

[fol. 123½] [File endorsement omitted.]

[fol. 124] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO PORTIONS OF RECORD TO BE INCORPORATED IN
TRANSCRIPT OF RECORD ON APPEAL—Filed Feb. 9, 1924

It is hereby stipulated by and between the parties to the above entitled cause, by their respective attorneys, that the Clerk of this court, in preparing the Transcript of Record of said cause on the appeal of paid defendants to the Supreme Court of the United States, shall incorporate in said Transcript of the Record, copies of the following pleadings, documents, and orders, and the same shall constitute the Transcript of Record on said appeal, and the Clerk of said Court shall transmit only the papers designated in this stipulation:

1. Petition filed March 5, 1923.
2. Appearance of defendants, filed March 26, 1923.
3. Stipulation of parties to extend time to plead, filed March 26, 1923.
4. Order entered March 26, 1923 extending time to file answer.
5. Motion of defendants to dismiss petition, filed May 26, 1923.
6. Order entered June 25, 1923, denying motion to dismiss.

7. Stipulation filed July 26, 1923, extending time to plead.
- [fol. 125] 8. Order entered July 26, 1923, extending time to plead.
9. Answer of defendants filed August 6, 1923.
10. Stipulation filed October 19, 1923 for the taking of depositions.
11. Motion made November 2, 1923 for continuance of the cause.
12. Order entered November 2, 1923 denying motion for continuance.
13. Opinion of the court, filed December 19, 1923.
14. Final decree entered January 4, 1924.
15. Petition for appeal, filed January 4, 1924.
16. Order allowing appeal, entered January 4, 1924.
17. Order dismissing petition as of two defendants, entered January 4, 1924.
18. Assignment of errors, filed January 4, 1924.
19. Affidavit of George W. Keehn, filed Jan'y 4, 1924.
20. Appeal bond, filed January 4, 1924.
21. Citation to appellee, filed January 4, 1924.
22. Certificate of evidence.
23. Copy of this stipulation.
24. Notice of lodging proposed Statement of Evidence.
25. Motion to reproduce testimony.
26. Order to reproduce testimony.
27. Motion to transmit certain exhibits.
28. Order for transmission of certain exhibits.

This stipulation is filed pursuant to the provisions of Rule 8 of the Rules of the Supreme Court of the United States, for the purpose of [fol. 126] reducing the size of the Transcript of Record on appeal to the Supreme Court of the United States.

Dated January 30th, 1924.

J. A. Fowler, C. Stanley Thompson, Attorneys for Plaintiff.
Newman, Poppenhusen, Stern & Johnston, Travis, Mer-
rick, Warner & Johnson, Attorneys for Defendants.

[fol. 127] IN UNITED STATES DISTRICT COURT

[Title omitted]

Statement of Evidence—Filed March 10, 1924

Be it remembered and certified that on the hearing of this cause upon the petition and answer thereto, the United States of America, plaintiff, appeared by Honorable Edmund J. Bowman, Honorable James A. Fowler and Honorable C. Stanley Thompson, and the defendants appeared by Mr. Jacob Newman, Mr. Edward R. Johnston, Mr. Henry Jackson Darby and Mr. Edgar J. Johnson.

That said cause came on duly to be heard at Grand Rapids, Michigan and that the taking of testimony in open court began on November 26, 1923.

That during the hearing of said cause the following evidence was offered, admitted or excluded as hereinafter stated, and the following proceedings were had, that is to say:

That to sustain the allegations of its petition, the plaintiff introduced the following testimony and evidence, and the following proceedings were had:

[fol. 128]

GOVERNMENT'S CASE IN CHIEF

GEORGE W. KEEHN, being duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I reside at Kenilworth and am secretary of the defendant, Maple Flooring Manufacturers Association. I have been secretary of different maple flooring manufacturers' associations since 1905. The headquarters of the Association in 1905 were at Chicago, Illinois, which is also the headquarters of the present Association. The members of the different associations were manufacturers of maple, beech and birch flooring; some of them also manufactured oak flooring. The Association of 1905 lasted until 1907 or possibly 1908. The second association began in 1907 or 1908. My impression is that the articles of that association expired about 1909. It was succeeded by an entirely new association under different articles with a different membership. This association lasted until either 1911 or the fall of 1912. A new association immediately succeeded the one last mentioned. This association was organized on January 1st, 1913. A copy of the Articles of Association were filed with the Department of Justice. To the best of my knowledge and belief the document you show me is a copy of the document that was sent to the Department of Justice.

Mr. Fowler: Your Honor, we will ask that this be filed, Gov. Ex. No. 1.

Mr. Johnston: We object to the introduction of this evidence in order that the record may be clear and the introduction of all other evidence relating to associations prior to the one sought to be dis-[fol. 129] solved, for the reason that such associations are different as to membership and as to articles of association and as to practice under the articles of association, from the association now sought to be dissolved; that the practices existing under prior associations do not exist under this association and that therefore the pertinent inquiry is as to what the present association is now doing, we having offered if the Government was not satisfied with the prior abandonment of all the practices followed under previous articles of associations, to allow an injunction to be issued against such practices, so that the Government may be satisfied. The allegation in the petition is with reference to this Association, to-wit, the Association which now exists and not as to prior associations and alleges that the association was organized in 1897, 'This Association' is the language of the petition—defendant association.

Mr. Fowler: Of course, your Honor, we are going to undertake to prove as a matter of fact, they are all the same association.

The Court: The document will be received and the objection may stand as to all testimony of this character without repeating it.

(Articles of Association referred to marked Gov. Ex. No. 1.)

I have before me a list of the members of the present Association as well as a list of the members of the Association that organized on January 1st, 1913. There are twenty-two members of the present association. W. D. Young & Company and Mitchell Bros. Company were members of the Association organized in 1913 and are [fol. 130] members of the present association. Wisconsin Land & Lumber Company claim they are not members of the present association. They never signed the articles of association and never agreed to join the present association. Up to March, 1923, they exchanged statistics with other manufacturers but since then have discontinued all relations of every kind with the association. They were members of the association that existed in 1913. Cobbs & Mitchell, Inc., I. Stevenson Company, Cummer-Diggins Company, Osgood & Blodgett Manufacturing Co., Kerry & Hanson Flooring Company, East Jordan Lumber Company, Nichols & Cox Lumber Company, Strabel Lumber & Salt Company, Foster-Latimer Lumber Company, West Michigan Flooring Company, Northwestern Cooperage & Lumber Company and the J. W. Wells Lumber Company were members of the association that existed in 1913, and are members of the present defendant association. William Horner was a member of an association from July 1st, 1915 to December 31st, 1915, when he discontinued his membership. Of the 22 members of the present association about 16 of them were members of the association that existed in 1913. There were 30 members of the association last mentioned, 14 of whom do not belong to the defendant association.

Q. You say that association lasted up until what time?

A. Until 1916, January 1st, 1916.

Q. That was immediately succeeded by another association, was it?

A. A new association was organized, new articles of association were adopted, printed and signed up, I presume.

Q. But this one functioned right up to the very day the other one began, didn't it?

A. Yes.

Q. And you were the Secretary of the old one?

A. Yes, sir.

Q. Became the Secretary of the new?

[fol. 131] A. Yes, sir.

Q. Your office was the same place, wasn't it?

A. In Chicago, but not necessarily in the same building but we were in Chicago, yes. They were separate organizations

Q. As a matter of fact, wasn't your office in January 1916 in exactly the same building?

A. They may have been, I don't recall that. It is immaterial anyway.

Referring to Government's Exhibit 1, the association therein provided for operated under said articles.

Q. They kept their Special Fund and their General Fund just as provided for herein?

A. Yes, sir.

Q. And also the reports were made just as required here?

A. Yes, sir.

Q. That was a report of course from each individual member?

A. Yes, sir.

Q. And did you send out a summary of that report to the various members, I mean, did you send out to each member a report showing exactly what each other member had been doing?

A. You mean in shipments?

Q. I mean as to shipments, etc.

A. Yes, sir.

Q. That is, you complied literally with these provisions here?

A. Yes, sir.

[fol. 132] I cannot be certain as to whether or not the document you hand me is a correct copy of the articles of association which became effective on January 1st, 1916. The articles have certain blanks which were not filled in. These articles say January, 1916, to the first day of January, 1919. Below that in pencil, "1913 to 1916." The document is a copy of the articles I gave to Mr. McKeag of the Federal Trade Commission on April 23d, 1919. There appears on this the following statement. "This is the only sample copy we now have of the articles of association of the Maple Flooring Manufacturers Association." The figures in pencil, "1913", "1916", are inserted so this copy will correspond with the copy filed with the Department of Justice, Washington, D. C., December 31, 1912.

The figures in ink, "1916", "1919", etc., indicate the extension and duration of the articles for three years from January 1, 1916, as per our letter to the Department of Justice under date of January 27, 1916. That is my signature and I am satisfied that states the truth. The interlineations on page 10 are not in my handwriting. The interlineations are modifications of these articles that took effect in 1916. For instance: "NOTE.—June 29, 1917" relates to a modification that was made with respect to the classes of flooring to be reported. "Narrower than 6" wide No. 3 Common and poorer not kiln dried or end matched is exempt if used in U. S. cantonment work." In other words, any material of that description that was sold to the United States Government during the war was not [fol. 133] reported to the Association. I should say that the document in question is a correct copy of the articles as originally adopted and subsequent modifications of them. The modifications in question are interlined.

Mr. Fowler: Your Honor, we will introduce this as Gov. Ex. No. 2.

The modifications modified both the articles and the practices of the association then in existence. The articles last mentioned extended up to January 1st, 1919. There were twenty-eight manufacturers composing that association, eleven of whom do not belong to the defendant association. Seventeen members of the association that existed up to January 1st, 1919, are members of the present defendant association, which is composed of twenty-two members.

Q. Were the Articles of Association adopted on January the first, 1919?

A. Yes, sir.

Q. How long had these Articles adopted on January the first 1919 been under discussion by the members of the other Associations?

A. I couldn't say off hand. Q. It had been under discussion among them for some time. A. There was an entirely new Association formed on January first, 1919.

Q. I asked you if these Articles of Association had not been under discussion by the members of that Association for some time?

A. I couldn't say off hand whether they had or not.

Q. You mean to say that these had never been mentioned until January the first, 1919?

A. Everybody knew they were in existence at that time, Mr. Fowler, that when the Articles expired we formed other Associations.

Q. I am speaking about the ones that were adopted January the first, 1919. Hadn't they been agreed upon before January the first, 1919?

A. I couldn't be certain as to that. It takes some time to formulate these organizations, sometimes it takes two or three months. [fol. 134] Q. Had to be formulated before it was adopted?

A. Might not have been adopted until some time in January or February.

Q. Was it?

A. I don't know.

Q. Don't you remember?

A. Not off hand, I would have to look that up. I can't recall when the Articles of January first, 1919 were adopted and signed.

Q. Anyway the old Association existed until these were adopted, didn't it?

A. I would say so, yes.

Q. It was functioning on up to the very time these went into operation?

A. It functioned up to December 31st, 1919.

Q. Didn't it function up to the time they began to operate under these Articles?

A. There was a different membership on January 1st, 1919.

Q. Didn't the other Association function up until these Articles were adopted?

A. I think I have answered that question. The old Association could not function for the month of January, 1919.

Q. I am not reasoning anything about it.

A. The new Association was formed.

Q. Didn't the old Association function up until this one began?

A. I would say so; yes.

The Court: Was there any gap between the two Associations?

A. No, sir.

Q. How long did the Association function under those adopted January 1st, 1919, or at least purported to be adopted then?

A. Until July 1st, 1919, six months.

[fol. 135] The document you hand me is a copy of the articles of association that were in effect from January 1st, 1919, to July 1st, 1919.

Mr. Fowler: The Government will file this as its Exhibit No. 3.

The articles last mentioned expired on July 1st, 1919 and other articles of association were immediately adopted.

Q. As a matter of fact, that Association functioned under that one until this one began to function under this one, I mean the one adopted July 1st, 1919?

A. Yes.

Twenty-one members of the present association were members of the association that was in existence from January 1st, 1919, to July 1st, 1919, which consisted of 29 manufacturers, eight of whom do [fol. 136] not belong to the present defendant association. The personnel was entirely different and the dates of joining were different in 1919. Of the eight manufacturers above mentioned, I think only one of them quit manufacturing—possibly two. The document you show me is a copy of the articles of association that were adopted on July 1st, 1919.

Mr. Fowler: The Government will file this as Gov. Ex. No. 4.

The Court: It will be understood that all exhibits which are offered in evidence will be received until an announcement is made to the contrary.

Mr. Johnston: All subject to our objection, your Honor.

The Court: Certainly.

Mr. Johnston: If I may interrupt just a moment. There was one other ground I should have added to that objection—that was that the petition in this case doesn't charge that what the defendant did was done with unlawful intent. The only possible materiality as we conceive for the introduction of this evidence would be for the purpose of showing intent. Since that is not charged in the petition we add that as our additional ground of objection.

Referring to the handwriting on page 7 of the exhibit last mentioned, "Discontinued March 31, 1920," I wrote that. That applies to the allotment feature and the general fund. There has never been any allotment contract of any kind between any members of any associations since March 31st, 1920. There has been no general fund and no allotment payments since March 31st, 1920. The [fol. 137] cancellation of article 14 automatically cancelled article 18.

Q. Where is the minute cancelling that Article, have you got a minute of it?

A. I am not certain that we have, but we can look it up. We have issued no reports or made no payments of any kind under any allotment contract, there has been no allotment contract in affect since March 31, 1920.

Q. Did you keep a minute of all your meetings?

A. Sometimes we did and sometimes we didn't.

Q. Do you mean to say that you did a great many things at those meetings that you made no minutes of?

A. No, I wouldn't say that.

Q. Do you mean to say that you would do a thing like that and make no minute of it?

A. Yes, certainly we would.

Q. You would abrogate Article 14, and Article 18 without making any minute of it?

A. Yes, sir, we did upon the advice of our attorney we suspended all Association activities beginning in April, 1920, and running about four months thereafter on account of the Memphis case. We have a copy of his opinion with us and then we resumed afterwards in August, 1920, our statistical work, but we never resumed any allotment contracts and haven't had any to this day.

Q. Did you ever suspend that Article 15?

A. Which is that?

Q. The reporting.

A. No, we never suspended except for four months.

Q. That was after the hardwood case?

A. Yes, that was after the hardwood case.

Q. Then you resumed it?

A. Resumed it in August 1920. We have a copy of Mr. Newman's opinion, a record of it.

Mr. Fowler: When you get to your side of the case, you can put all of those things in?

The Court: Let me see if I understand your statement: do you mean to say that you had meetings of the Association of which you [fol. 138] made no record?

A. Well, I think his question was whether or not we did—

The Court: No, answer my question.

A. No, I think we made minutes of all meetings.

The Court: And of all actions?

A. Not of all actions, there is no minute of this action.

The Court: Such as would be required to suspend one of your Articles of Association?

A. I don't recall that we had any record of any action taken on that.

The Court: Was there any action taken?

A. We suspended all statistics for four months and did not resume the allotment feature.

The Court: Was there any action taken at a meeting of the Association?

A. I should have to look that up to see. I know we took Mr. Newman's advice in regard to suspending our——

The Court: I didn't ask you that.

Q. Haven't you examined the minutes of your Association to see if there is anything in them showing that that was discontinued?

A. That the allotment was discontinued?

Q. Yes, haven't you examined your minutes to see if there was any such order in the minutes?

A. Well, I don't recall that it is in there.

Q. Don't you know it is not in there?

A. I think it is not in there but I am not certain about that.

Q. On whose advice was it that this was suspended?

A. Oh Mr. Newman's advice, our attorney's advice, that we suspend all statistical activities of the Association.

Q. Mr. Newman wrote you a letter to that effect?

A. Yes, we have his letter.

Q. What is the date of it?

A. I would say along about April 1920.

[fol. 139] The association that was organized July 1st, 1919, terminated on December 31st, 1921. I do not think there were any modifications of it other than those noted on the face of the articles. There was not another association organized on October 1st, 1921. There was a tentative plan that was put out, but it was never consummated and nothing was ever done under it. I do not recall how many members signed the tentative plan. I haven't a copy of it. The document you hand me is a copy of the tentative plan.

Q. You have just now said there was a tentative plan.

A. Yes, it wasn't a tentative plan; it was an effort to form a new organization.

Q. Is this one I have now handed to you, was that the one that you were intending to organize under?

A. Yes, that we made an effort to organize under and failed to organize it.

Mr. Fowler: The Government wishes to file this as Gov. Ex. No. 5.

I cannot recall offhand how many manufacturers signed it. It failed of consummation and went into the discard. The documents [fol. 140] you hand me are copies of letters sent out on September 16th and October 24th, 1921.

(Said documents were introduced in evidence by Mr. Fowler and marked Gov. Ex. No. 6 and Gov. Ex. No. 7 respectively.)

Nichols & Cox, the Holt Hardwood Company, Flanner & Steger Land & Lumber Company, and possibly one other manufacturer did not sign the tentative plan. Those who did sign it signed upon the condition that said plan would be signed by all. The last articles of association were adopted some time in March, 1922, and were dated back to January 1st, 1922. The previous association continued to

function up until the organization of the present defendant association. The document that you hand me is a copy of the Articles of Association adopted in March, 1922, and dated back to January 21st, 1922.

Mr. Fowler: The Government files that as Gov. Ex. No. 8.

Before the articles last mentioned were adopted I sent out a circular letter, a copy of which you hand me.

Mr. Fowler: The Government will file this as its Exhibit No. 9.

I don't think I have any of the correspondence between the Association and the members during the existence of the articles of the Association adopted January 1, 1913. We did not keep it you know. We couldn't keep anything like that for 10 or 15 years back. I presume it was thrown away in the ordinary course of business. We may have some of it. We have gone through our files to find anything we can.

Q. Have you the minutes of your meeting during that period?

A. I think not. I have a list of minutes, however, that we have given to the Department of Justice and the Federal Trade Commission.

[fol. 141] Q. Did you furnish the Department of Justice with all the minutes you had?

A. Yes, we did.

Q. Were those minutes kept in a book?

A. They were loose-leaf folders, mimeographed and stuck away anywhere.

Q. Never kept a minute book at all?

A. Never kept a minute book at all. We are a voluntary association. We never supposed we needed to keep any minutes at all.

Q. I am not discussing it. I am asking you the fact. You just stuck those loose leaves away anywhere?

A. Anywhere. Yes, anywhere.

Q. Did you have a stenographer present at the meetings?

A. No. No sir.

Q. You yourself just made some rough notes?

A. Made some rough notes and wrote them up and mimeographed them and sent the reports to the members as memoranda of meetings. The proceedings of meetings.

I presume those were sent at the time by me or under my directions and were submitted to all the members. I couldn't answer as to whether the members still have them. We had more or less correspondence at different times with the members regarding their statistical reports and other things. We may have some of the minutes of some of these succeeding associations but I think not. I think everything we had we gave to the Department of Justice. We had a long list of minutes and accounts and things like that we gave Mr. Rooney in 1921 or rather explained to him and to Mr. Frank in 1922 and to Lewis and Garber in 1922.

Q. You have nothing except what you gave up at that time?

A. We couldn't find anything except what we gave to them.

That was in 1921 and 1922. My recollection is that Mr. Howe and Mr. Rooney did not ask particularly for any documents. We gave them some however. During the whole of the time we had been sending out copies of the minutes to the various members of the association. We had some correspondence in the files between the secretary and the members. I brought a trunkful (of whatever we could find) over with me in answer to the subpoena. It is at the Hotel Morton. I do not know whether that trunkful has been gone through by the agents before but I do not think so. We showed the agents whatever they wanted. Whatever they asked for. They went through our files. We gave them any files they asked for. Any minutes, any proceedings.

[fol. 142] In 1915 a petition was filed with the Federal Trade Commission. This is a facsimile copy or reproduction of the original.

Mr. Fowler: The Government will file this as Exhibit 10.

The petition was sent some time in July, 1915. The document which you show me entitled "Minimum Price Plan, Maple Flooring Association, July 1st, 1916" is a copy of the plan that was sent to the Federal Trade Commission and the Department of Justice.

Mr. Fowler: The Government will file that as Exhibit No. 11.

The document you show me entitled "Minimum Price Plan as revised as of January 1, 1919, Maple Flooring Manufacturers Association," was gotten up by me.

Q. Did that go into effect on that date?

A. No minimum price ever was enforced or was consummated.

Q. Well you got the one up that has just been read, didn't you, that was gotten up?

A. It was gotten up, yes, sir.

Q. And then you got up this one which purports to be a revision of that one, two years or two or three years later.

A. It was reprinted as a plan that was pending before the Department of Justice and the Federal Trade Commission for the information of new members who joined our Association, January, 1919.

Q. You had considerable correspondence about it?

A. We may have had and we may not.

Q. We have some, I will present that to you directly. But this was a plan that was planned by the Association?

A. Yes.

Q. Circulated among the members of the Association?

A. Yes.

[fol. 143] Mr. Fowler: The Government will file this as Exhibit No. 12.

The document entitled "Maple Flooring Manufacturers' Association, Minimum Price Basis January 6, 1921" is a copy of another plan.

Mr. Fowler: The Government will file that as Exhibit 13.

The plant last above mentioned was signed by the members. It was filed with the Department of Justice and the Federal Trade Commission. There was filed with it a reprint of the old petition of July 14, 1915. One of the members of the Association was Cobbs & Mitchell, Inc. I know Mr. Thomas. To the best of my judgment, I received copy of the letter from Mr. Thomas, dated February 2d, 1920. Mr. Thomas is a representative of Cobbs & Mitchell and Mitchell Bros. Company. The document you hand me is a copy of a communication which I sent out to the various members under date of January 11th, 1921, regarding the minimum price basis. I also sent out a typewritten paper entitled "Memoranda Concerning Minimum Price Basis." I also sent out a letter to members of the Association dated January 22d, 1921. Also another letter dated January 31st, 1921. The documents you hand me are correct copies of the letters above mentioned. I think I received the original of the copy of the letter dated February 3d, 1921, addressed to me and signed M. E. Thomas.

[fol. 144] The Court: I take it that your objection does not go to the question of copies being used instead of the originals?

Mr. Johnston: Oh, no, your Honor, not as to the form.

Mr. Newman: Our objection is as to the matter of substance.

Mr. Johnston: That is all right, we are not objecting on that ground.

I sent out a communication to members dated February 3d, 1921. The document you hand me is a copy of said communication. The communications dated February 11th and February 4th, 1921, were sent out by the office while I was out of town. The communications to the Federal Trade Commission dated February 12th, 1921, was sent during my absence from the city. I sent out the communication dated May 28th, 1921, also the communication dated June 28th, 1921. The communications dated December 12th, 1921, addressed to B. P. Wheadon and to Morris E. Thomas are signed by me.

Mr. Fowler: Your Honor, we wish to file this as Government Exhibit 14.

The Court: I suggest that you mark them as the numeral exhibit and then for each leaflet or part of the exhibit that you add a letter.

(Papers referred to marked Govt. Ex. 14, 14 A to 14 L inclusive.)

The letters "M P P" as used in some of the communications above mentioned stand for minimum price plan.

The letter dated May 28, 1921, addressed to members and quoting a letter dated May 26 from the East Jordan Lumber Company refers to the minimum price basis. I think it must refer to the plan of [fol. 145] January 6, 1921. The name was changed.

Q. It is dated May 28, 1921?

It must have referred to the plan of January 6, 1921. They were differentiated. Some were called minimum price plan. The last one minimum price basis.

The Court: Just what is the difference in plan?

A. The minimum price basis never provided for any penalty of any kind. A man could do just as he pleased about it. It was without force or effect. It was simply a statement of business policy. That is the one Mr. Nebeker objected to so strenuously in the last paragraph of that celebrated letter of his that you will find in here and the whole plan immediately became null and void as soon as we got his letter.

We were writing about the minimum price basis January 6, 1921, which was submitted to Mr. Nebeker on January 31, 1921. The East Jordan Lumber Company probably mentioned the minimum price plan in error. There was no minimum price plan. It may have been an error of our stenographer in quoting the letter too.

I signed the document dated January 29th, 1914, addressed to John Schroeder Lumber Company. I also sent out a letter, copy of which you hand me, dated March 12, 1914, addressed to members.

[fol. 146] I also signed the letter, copy of which you hand me, addressed to John Schroeder Lumber Company, dated January 12th, 1914.

The Court: What I am trying to do is to shorten up this matter of introduction of exhibits and if the documents could be shown to the witness so he could see those are genuine documents, then we would not have to take this time that we are taking.

Mr. Fowler: Well as your Honor suggests, I will just hand them to the witness and let him identify them and bring them in in the morning.

The Court: Let me suggest this, unless counsel on the other side object, that these documents be used upon assurance of counsel that they are the documents and that they then be submitted to the witness and if there are any corrections they can be made and if upon examination he finds some that are incorrect they can be taken out.

Mr. Newman: We have no objection whatever in following your Honor's suggestion subject to Mr. Keehn having an opportunity this evening to go over them and see whether they are correct or are what they purport to be.

Mr. Fowler: I wish to say this about some of these. They were obtained from the Federal Trade Commission and some are photostats copies taken from the originals but the originals will be here we think tonight.

Mr. Newman: We won't stand on that.

(Documents of various kinds introduced in evidence and marked Govt. Exs. 15, 15 A to 15 F F F, inclusive.)

Through inadvertence there was no Gov. Ex. 15 T.

(Witness temporarily withdrawn.)

[fol. 147] G. H. EARLE, being first duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I am connected with the Wisconsin Land and Lumber Company and have been summoned here by the government as a witness. I do not have any of the correspondence in relation to any of this association work that passed between my company and Mr. Keehn. I do not think there is anything in our files now at all. Several years ago, between three and four years ago, our office manager went through the attic where we had a lot of our files. It was pretty well cluttered up and disposed of a lot of material for waste paper and later Mr. Darby called on us and asked us for the files that we had. Anything that we had there, anything that was left, was gathered together and he was going to look them over. But he didn't have time and he asked us to send them to him in Chicago, which we did. We sent him everything we could find around the office.

(Cross-examination by Mr. Johnson:)

We are not a member of the present association. The files that were destroyed included files on other matters than the association. That had no connection whatever with any investigation made by the government in this case. My father was for many years president of the Maple Flooring Manufacturers Association and my work was taken up in the production department and did not have any connection with the association work at all. I do not know what files I sent to Mr. Darby and did not make any list of them.

AUGUST O. BUBLITZ, being first duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

My business is manufacturing packing boxes and maple flooring. I am connected with August C. Beck Company of Milwaukee. In 1922 we manufactured 2,949,000 feet of maple flooring. Our capacity is about 20,000 feet a day. In 1921 we manufactured 3,558,000 feet of maple flooring. In 1918 we manufactured 1,116,000 feet; in 1919, 3,689,000 feet and in 1920, 2,873,000 feet.

Q. Your concern is not a member of this Association?

A. No, sir.

Q. Never has been?

A. Years ago.

(Cross-examination by Mr. Johnston:)

We do not manufacture any flooring other than maple. We buy rough maple lumber on the open market. We have two machines. We sell our product to retail lumber yards located in all parts of the United States.

OTTO PRECHEL, being first duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I am connected with the Segelke & Kohlhaus Manufacturing Company of La Crosse, Wisconsin. Our principal business is manufacturing interior finish. In 1918 we manufactured 84,000 feet of birch flooring; in 1919, 67,000 feet; in 1920, 101,000 feet; in 1921, 82,000 feet and in 1922, 27,000 feet. In 1918 we manufactured only 300 feet of maple flooring; in 1919, 500; in 1920, none; in 1921, 600 feet; in 1922, 500 feet.

(Cross-examination by Mr. Johnston:)

We have one flooring machine, and with it we manufacture all the oak flooring, maple flooring and birch flooring that we produce.

OSCAR O. BUBLITZ recalled.

(Cross-examination by Mr. Darby:)

We sell most of our flooring at St. Louis and all the way up to Chicago and St. Paul. We keep in touch with market conditions and the prices of other manufacturers through salesmen or we solicit by mail. If we make quotations and our orders are turned down, we have got to come again. We have pretty strong competition. In the course of our business we have learned of the prices made by Kerry & Hanson, J. W. Wells Company, I. Stevenson Trustees, Cummer-Diggins Company, West Michigan Flooring Company, Cobbs & Mitchell, and Mitchell Bros. They have been competitors of ours in selling in the territory above mentioned.

"Q. State whether or not you have at times found any of the firms you have mentioned quoting lower prices than yours or sometimes higher. How has that been, generally?"

"A. Well, we have found them sometimes lower and a few exceptions where they were higher—they have often a better price than we—as a rule they are always lower. We try to get prices, you know—we have to meet competition in order to get the business."

Sometimes we were able to meet their lower prices and to get the business and sometimes they got the business.

CARL BARNES, being sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I am a bookkeeper for the A. H. Krauskoph Company of Richland Center, Wisconsin, which company is engaged in the wholesale and retail lumber business and manufacturers oak and maple flooring. Our largest output is in other items. In 1919 we sold 217,325 feet of 13/16 maple and 3048 feet of 3/8 maple. In 1920

we sold 141,683 feet of 13/16 and 13,546 feet of 3/8; in 1921 we sold 36,095 feet of 13/16 and 1343 feet of 3/8; in 1922 we sold 55,434 feet of 13/16 and 2144 feet of 3/8. All the items above mentioned were maple flooring.

We also have a retail yard and sell maple flooring in that. I should judge we sell perhaps 50,000 feet a year in all grades out of our retail yard. All the flooring we manufacture is for sale although we aim to keep a stock all the time and carry some over every year. I think we usually have about 100,000 feet on hand. We do not buy any flooring that we don't manufacture.

(Cross-examination by Mr. Johnston:)

Our principal business is other than the production of flooring. We have two machines. The daily capacity of these machines is about 4,000 feet each. We run oak and maple flooring interchangeably through these same machines. The larger part of our maple flooring is sold in the vicinity of Richland Center. Madison is about as far east as it is sold and we go west out through Iowa. In selling maple flooring we have met competition from other manufacturers who sometimes sell at lower prices than we do. We come [fol. 151] into competition with the Northwestern Cooperage & Lumber Company, W. D. Connor Company, Wisconsin Land & Lumber Company.

I am not sure as to the difference in prices as between Connor and The Cooperage Company, but as between them and us I have noticed a difference. We are higher than they are. That is true also of the Wisconsin Land and Lumber Company but not so much so I think. I am not so conversant with the prices recently that they have made. We used a kind of a common sense basis in grading our maple flooring not so much the regular floor association grading. We would have the same general grades and so far as the quality of the product is concerned, we think it is probably as good as that of the members of the association and we employ the same general method of arriving at uniform grades.

CHARLES A. GOODMAN, being duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I am in the lumber and manufacturing business and am connected with the Goodman Lumber Company and the Sawyer-Goodman Company of Goodman and Marinette, Wisconsin, respectively. We manufacture maple flooring besides manufacturing and selling hardwood, hemlock and white pine. I have a record of the flooring manufactured by the Sawyer-Goodman Company. This record covers dressed and matched flooring, but does not include what is known as jointed factory flooring, of which we have made a considerable quantity in the past few years. During 1918 we manu-

factured 331,000 feet of dressed and matched flooring; in 1919, 421,000; in 1920, 604,000; 1921, 458,000; 1922, 1,685,000. For the first nine months of 1923, 1,842,000 feet. Up to and including 1921 we made just about the same amount of jointed flooring as we did of the dressed and matched flooring, but in 1922 and so far in 1923 we have made about 35,000 or 40,000 feet each month. The Goodman Lumber Company manufactured some jointed flooring and perhaps a small amount of dressed and matched flooring during the years above mentioned, possibly not more than 360,000 [fol. 152] feet each year, but they have no separate record of it. The capacity of our mills is 12,000 feet per day of finished, dressed and matched flooring.

[fol. 153] (Cross-examination by Mr. Johnston:)

Our capacity for jointed flooring is about 100,000 feet per day. We have three machines in the flooring mill at Marinette for making the dressed and matched flooring. The daily capacity of each of these machines is between 4,000 and 5,000 feet. We have flooring machines in the other mill, but we have no dry kiln capacity so we can't make the better grade of flooring. We sell most of our flooring in Wisconsin, Illinois, Michigan and Ohio to wholesale dealers and retail lumber yards. In the sale of our maple flooring we have met competition from other manufacturers and that competition has always been pretty active since we have been in business. The manufacturers whom I come most directly in competition with are I. Stevenson Company and Cobbs & Mitchell; Mitchell Bros., Wells Lumber Company, Wisconsin Land & Lumber Company, Northwestern Cooperage Company, William Horner, Ward Bros., W. D. Young & Co. In selling in competition with these various manufacturers we have found that competition took the form of varying prices quoted by different manufacturers. Sometimes their prices were lower than ours and sometimes we were able to meet their prices or perhaps better them. There has at all times been substantial variations in the prices quoted for the same grades and same sizes of flooring by the different concerns above mentioned. We find the prices are extremely variable. The competition we meet is quite difficult for us to locate because we can't depend upon the same prices at all. We will quote a price on a carload of a certain kind of flooring and maybe get the order and the next day quote the same price [fol. 154] for flooring again and lose the order by several dollars. The condition above described so far as the spread in prices between manufacturers for the same grades and sizes of flooring has existed right along since we have been in business and exists today. There have been many times when we could figure no profit in manufacturing flooring. At times the price of flooring has been high enough to permit a substantial profit; other times the prices has permitted no profit. We manufacture our maple flooring from our own logs, our own lumber. There is almost no time that I can recall when there was any money in making maple flooring out of the maple lumber we had on hand. We could usually sell the maple lumber to some

one else at a price which if we put it into the factory at the same price would leave us no margin, but we have been making this maple flooring largely as a matter of taking care of our trade and accommodation to our customers. We sell flooring in mixed cars with other lumber. The demand for maple lumber is very much broader than the demand for flooring. There are a great many uses to which maple lumber is put, whereas maple flooring is limited almost entirely to use in factories, homes and commercial buildings and the demand for it is dependent on the condition in the building industry. At times we have purchased flooring from other manufacturers and resold it to our trade. Neither of our companies belongs or has ever belonged to the defendant association. We have bought flooring from the Holt Hardwood Company, Wisconsin Land & Lumber Company, and mostly from the J. W. Wells Lumber Company because they are neighbors of ours and some from I. Stevenson Company.

[fol. 155] CHARLES T. KERRY, being duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I reside at Saginaw, Michigan. The name of my company is Kerry & Way Lumber & Manufacturing Company, which manufactures maple flooring. The Kerry Lumber & Manufacturing Company buys and sells hardwood and soft wood lumber, wholesale and retail, and manufactures interior finish and maple flooring. Kerry & Way Lumber & Manufacturing Company is not a member of the defendant association. The Kerry & Hanson Flooring Company is a member of the Association. The Kerry & Way Lumber & Manufacturing Company did not manufacture any flooring until 1920 and ran only part of the time during 1920 and 1921. The flooring manufactured by said company is beech, birch and maple, running strong to maple. No separate tally was kept of the different kinds. The production records of said company show that during 1920, 925,335 feet of maple, beech and birch flooring were manufactured. In 1921, 1,557,126 feet; in 1922, 2,483,641 feet.

The foregoing figures were taken from a letter addressed by said company to the Bureau of Investigation, Department of Justice, Washington, D. C. (Said letter was marked Gov. Ex. 15½ and introduced in evidence.)

(Cross-examination by Mr. Johnston:)

The capacity of the Kerry & Way Lumber & Manufacturing Company is about 3,000,000 feet a year or better of maple flooring. Said company has two machines. The Kerry & Way Lumber & Manufacturing Company is in competition with all other manufacturers in the sale of flooring. I do not look after the sales department of [fol. 156] the Kerry & Way Lumber & Manufacturing Company,

although it is frequently reported to me that lower prices are being made by different members of the Association. The Kerry & Way Lumber & Manufacturing Company meets these lower prices in the sale of its flooring. Active competition has always existed in the sale of maple flooring and it does today. Kerry & Way Lumber & Manufacturing Company makes some oak flooring. This oak flooring is made with the same equipment that is used in the manufacture of maple, beech and birch flooring. The sales manager of the Kerry & Way Lumber & Manufacturing Company has often reported to me that members of the Maple Flooring Association were sometimes getting better prices than said company was able to get, sometimes the same prices, sometimes higher prices.

GEORGE BULGRIN, being first duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I am connected with the R. Connor Company, of Marshfield, Wisconsin, which has a mill at Strathford, and also one at Leona, Wisconsin. The R. Connor Company is a large concern. It is not a member of the defendant association and has not been since 1918. The letter dated November 14th, 1923, and addressed to W. G. Burns, Bureau of Investigation, Department of Justice, is correct. In 1918 the R. Connor Company manufactured 3,959,034 feet of maple and birch flooring. In 1919, 4,415,000 feet; 1920, 3,479,000 feet; 1921, 4,651,000 feet; 1922, 4,412,000 feet. The above figures include a very small amount of oak, of which no separate record [fol. 157] was kept. (The letter above mentioned was marked Gov. Ex. 16.)

(Cross-examination by Mr. Johnston:)

Of the flooring manufactured about 15 to 25 per cent was birch. The R. Connor Company has four machines for the manufacture of flooring, having a daily capacity of 25 to 30,000 board feet of finished flooring. I am the sales manager of the R. Connor Company. As such I come in competition with other manufacturers of maple flooring. Our principal competitors are I. Stevenson & Co. Trustees, Northwestern Cooperage & Lumber Company and Wisconsin Land & Lumber Company; Foster-Latimer Company, Kneeland McLurg Company, J. W. Wells Lumber Company. I have been sales manager of the R. Connor Company for about six years, and during all of said time have kept in close touch with market conditions. I have always found that competition was very keen and that very rarely would there be any prices alike. Some would be lower and some higher all the time. The variation in prices was very substantial. The normal variation in price per thousand feet was \$5.00 per thousand. In 1919 and 1920 the variation for a given size and grade of maple flooring was sometimes as high as

\$25 to \$30 a thousand. There were times when there was a spread as high as \$50.00 a thousand. In order to meet this competition since 1918 I have found that at times our prices were higher than the prices of our competitors who were members of the Association. That has occurred frequently. At other times we were able to meet their prices or perhaps better them and get the business.

(Redirect examination by Mr. Fowler:)

[fols. 158 & 159] Q. You were not a member of the Association in 1921, were you?

A. We were not.

Q. You were in 1918?

A. We discontinued our membership some time in 1918.

Q. You still kept in touch with it though, didn't you?

A. Well no, I do not believe we did.

Q. Well you say you don't believe you did. Well did you?

A. No, I didn't keep in touch with it.

Q. Did you carry on correspondence with the members of that association all the time?

A. No, we did not.

Q. And did they keep you informed all the time that was the present price they had agreed on, did they keep you informed of that?

A. No.

Mr. Johnston: May I inquire if counsel is examining this witness as his own?

Mr. Fowler: No, I am crossing examining him on a matter they examined him on, the defendants.

The Court: Very well.

Q. Isn't it correct that you carried on correspondence with members of the Association with reference to the prices they had fixed or had an understanding about?

A. No, we didn't.

Mr. Johnston: I object to "prices they had fixed" as assuming a condition which is the very point of inquiry before this Court and is very improper.

Q. Well you did have correspondence with the North Western Cooperate and Lumber Company, didn't you?

A. Why, I suppose so.

Q. Don't you know so?

[fol. 160] A. I think we have more or less correspondence with all the people.

Q. Well they were your competitors weren't they?

A. Yes.

Q. What was you writing them about?

A. Well sometimes we buy stuff of them.

Q. I will ask if you didn't receive a letter from that concern on April 18, 1921, and which contained this passage:

The Court: Perhaps you better show him the letter.

Mr. Fowler: Your Honor, my trouble is that we haven't got the letter, and that was one that was in a bunch of papers that were examined at one time and there was a note of this taken, and we haven't got it.

The Court: I thought you were reading from the letter itself.

Mr. Fowler: I am just reading some ex-erpt from it.

The Court: Very well.

Q. (Reading:) "Answering your question as to whether there has been any change in prices lately, we know of none, and our understanding is that every one is using the basis made at Marinette, and as we understand it, are still using this also." Now didn't you get a letter that had that in?

A. I don't remember that. I couldn't state whether we got that or not.

Q. Well isn't it your best judgment that you did get such a letter as that?

A. No.

Q. Haven't you some recollection of getting that letter from that concern?

A. I would not recollect it.

Q. Well didn't you have some understanding about the basis being reached at Marinette, or something said about it?

[fol. 161] Mr. Newman: May we interpose an objection. The question, it seems to me, to be improper, unless counsel shows some connection with what he calls the basis at Marinette and this Association.

The Court: Well he is talking about what he claims was in a communication that was sent.

Mr. Newman: I know, but unless it is in some way connected with the Association, it seems that it is in no wise pertinent or material, what other individuals may have done, that is, one member of the association, what trades he may have had with a non-member, we respectfully submit is wholly immaterial.

The Court: You may answer.

Mr. Fowler: Read the question.

(Question read.)

A. No.

Q. Don't you remember that there was a meeting at Marinette of this Association or some of its members?

A. I don't remember that meeting or any meeting.

Q. Weren't you told about it?

A. Well I suppose we—Somebody told me about it, I don't remember that.

Q. Don't you know somebody told you about it? Don't you have a recollection of the fact you were told about it?

A. No, I haven't any recollection of that meeting or being told about it.

Q. Then why do you suppose you were told about it?

A. Well I don't know, you meet and talk with so many different people at different times, probably somebody talked about it, but——

Q. Didn't you know from members of this Association that there were prices established by the Association, price bases?

Mr. Johnston: When and where?

[fol. 162] Mr. Fowler: Any time within the last three or four years.

A. Well I suppose there was.

Q. Don't you know it and weren't you so told by members of this Association?

A. Why——

Q. Then why do you suppose there was?

A. Because you kind of intimated the fact to me here.

Q. You got your whole information from me, did you?

A. Just about.

Mr. Fowler: Stand aside.

Re-examination by Mr. Johnston:

Q. Did you ever hear at any time when you were members of the Association or subsequent to that time of the Maple Flooring Manufacturers Association ever meeting at Marinette?

A. I don't remember that; never heard of it.

Q. When you were a member of the Association did members of that Association ever meet at any other point than Chicago?

A. That is the only place I remember of.

Q. And has the Maple Flooring Manufacturers Association to your knowledge ever had anything to do with a Marinette base?

A. Never.

Mr. Johnston: That is all.

E. C. KNOERNSCHILD, being duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I am Secretary of the Cream City Sash & Door Company, Milwaukee. We do not manufacture maple flooring or any other kind of flooring, and have not manufactured any maple flooring for the last five years or any other kind.

[fol. 163] W. R. GILLETTE, being duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I am connected with the Brown Lumber Company of Traverse City, Michigan. The mill of our company is located at Manistique, Michigan. We began to manufacture maple flooring in 1920. In

1920 we manufacture 910,000 feet; in 1921, 800,000 feet; in 1922, 1,200,000 feet. I have not the figures for the amount manufactured in 1923. I think we will run about the same as we did in 1922, possibly a little more. Our company is not a member of the Association and has never been.

(Cross-examination by Mr. Johnston:)

We have one flooring machine in our plant. Our daily average would be approximately 6,000 feet. We manufacture our flooring [fol. 164] according to the grading rules of the Maple Flooring Manufacturers Association. We have found it an advantage to do so. It enables us to say to our customer that the flooring is made in accordance with the Association rules and we claim that our flooring is equally as good as that made by members of the Association. I think the rules are all right. They give the purchaser a standard grade of flooring—uniform flooring. Most of our flooring goes to Chicago, practically 80% of it, and the balance to Detroit. In the Chicago and Detroit markets in the sale of our flooring since 1920 we have met competition. At times we find the competition very keen and we are able sometimes to get the business, other times we find that the other fellow apparently has a lower price than we have, so we don't get the order. Our principal competitors are the Northwestern Cooperage & Lumber Company, Wisconsin Land & Lumber Company, Holt Hardwood Company. I have often been told by our salesmen that some of our competitors were quoting lower prices for the same grade and size of maple flooring than we were. That situation has existed since 1920. Our equipment for the manufacture of flooring cost us about \$5,000, not including the cost of installation. We bought the machine second-hand. It is an American Woodworking Machine. We saw our own maple lumber.

GEORGE STRABLE, being duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

The Bliss & Van Auken Lumber Company has not manufactured maple or beech flooring since 1917.

(Cross-examination by Mr. Johnston:)

In 1917 the Bliss & Van Auken Lumber Company's mill burned. We did not rebuild because we could see no profit in the manufacture of hardwood flooring. Since then our company has sold its lumber in the rough because it was more profitable to do so than work it up into maple flooring.

[fol. 165] B. F. SPRINGER, being duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I am Secretary of the John Schroeder Lumber Company of Milwaukee, where the maple flooring part of the business is located. Our saw mill is located at another point. Our company has been engaged in the manufacture of maple flooring for about 15 or 20 years. It is not a member of the defendant association nor in any way connected with it. In the statement furnished by us to the Department of Justice the amount of maple flooring manufactured by us was estimated. Since then we have ascertained the amounts manufactured. During 1918 we manufactured 344,000 feet; in 1919, 300,000 feet; in 1920, 779,000 feet; in 1921, 949,000 feet; in 1922, 305,000 feet. We have not manufactured any maple flooring during 1923.

(Cross-examination by Mr. Johnston:)

In 1918 we had one operating unit, that would be a capacity of approximately 5,000 feet a day. In 1918 we were operating only one unit. Now there are three machines or three units, which would give us a capacity of approximately 15,000 feet per day, but we never operated the other two units. We operated only one unit right along, although we had three. Our company is engaged in the manufacture of maple flooring at Milwaukee. During the last few years we have purchased practically all the maple flooring we have sold, except such quantities as we had on hand and carried over of our own manufacture. During the entire period of from 1918 to 1922 we purchased maple flooring from other manufacturers, as well as operated [fol. 166] our own plant. It costs more to manufacture flooring in the City of Milwaukee than we can buy it in the open market. We found that we could purchase to better advantage from other fields than manufacture the flooring needed for big jobs. Most of the people from whom we buy flooring call us shoppers. We shop around and get the lowest prices possible. Our Purchasing Department has a list of manufacturers of every kind of product. Whenever we desire to purchase maple flooring we send out an inquiry addressed to 30 or 40 manufacturers. The prices quoted are listed and other things being equal the manufacturer who quotes the lowest price gets the business. We have stopped manufacturing maple flooring but still have one unit on the floor. We can resume the manufacture of maple flooring and are waiting for the time when we can do so profitably.

HAMLIN J. WARD, being duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I live at Big Rapids, Michigan, and am a manufacturer of hard wood flooring. I have been engaged in that business for about 24

years. We manufacture maple flooring almost exclusively. The name of my company is Ward Bros. Our company is not a member of the defendant association. Our company was a member of the Maple Flooring Manufacturers Association many years ago. We sent to the Government a statement of flooring manufactured by Ward Bros. since 1918. The figures stated in the letter are correct.

(Letter marked Gov. Ex. 17 and received in evidence.)

[fol. 167] (Cross-examination by Mr. Johnston:)

The capacity of our plant is about 6,000,000 feet per annum. We have three flooring machines with a maximum daily capacity of approximately 24,000 feet. We manufacture very little beech and no birch. We buy the rough lumber in the open market. We sell our flooring throughout the United States. The bulk of it is sold in the Middle West. In manufacturing our product we follow substantially the grading rules of the Maple Flooring Manufacturers Association.

I have been in the maple flooring industry for about 24 years and have observed the effect of the introduction of standardization rules. In my opinion the standardization rules are essential. A great many of the inquiries we get for maple flooring specify that the grades are to be in accordance with the rules of the Maple Flooring Manufacturers Association. The same is true with respect to orders given us. Grades of flooring depend very largely upon the grades of lumber used, that is so far as the percentage of each grade is concerned. A thousand feet of lumber will make a number of items of different grades and sizes. There are three grades, Clear, No. 1 and Factory, and there are several widths which must be made in order to avoid waste. The product of every thousand feet of rough lumber will consist of flooring of each width and grade. In other words, in manufacturing flooring all three grades are made at the same time. One might sell a thousand feet of lumber that would make practically all Clear, but such a grade of lumber is not used in the manufacture of flooring. In the manufacture of flooring we use the No. 1 and No. [fol. 168] 2 Common rough lumber and the very best No. 3 Common, but we do not use any considerable amount of the best grade of lumber which is known as First and Seconds. That is too valuable a lumber to put into maple flooring. First and Seconds are used for other purposes. Quite generally, the quotation to wholesalers and others dealing in maple flooring is made subject to commissions. The usual commission at the present time is \$2.00 a thousand. Such an allowance is quite generally made in the maple flooring industry. During the time that I have been in the maple flooring business I have found quite active competition. That competition has been represented by variation in prices quoted by different manufacturers for the same size and grade of flooring at any given time. That competition has always existed and exists today. The terms we quote our customer are 2% off from net amount of invoice for cash within 15 days or 60 days net. I think these terms are quite generally used by other manufacturers. They are terms that are general in the

lumber business, not only maple flooring but lumber business generally.

(Redirect examination by Mr. Fowler:)

I have always been anxious to find out what prices other manufacturers were quoting, and it is possible that I have inquired of different manufacturers the prices that they were asking for their product. I don't recall that I ever wrote anyone concerning prices asked for maple flooring. In conversation with manufacturers of maple flooring I have discussed such matters in order to find out [fol. 169] what the market was. I don't recall any correspondence. I discussed the matter of prices asked with our competitors because they were the ones who knew what prices they were making. We were not members of the Association and it was very important to us to find out market conditions. We were handicapped because we were not members. We did not have the information in regard to general trade conditions. If I happened to discuss the matter of prices asked with a member of the Association he was very frequently quite frank about the matter. I inquired what prices he was asking because I wanted to be within the market. It is a distinct disadvantage to offer your flooring at materially less than others are asking or more either. If you ask less you are perhaps getting more business than you want and are therefore not in a position to take care of your regular customers. I wanted to know what the market was in order to keep within that market, as well as get what the product was worth. What I asked the persons with whom I discussed the matter of prices was, what prices the particular persons were charging for their product.

GEORGE W. KEEHN resumed the stand for a continuance of direct examination by Mr. Fowler.

These associations at one time had a committee called "Market Conditions Committee," with I think about 7 or 8 or 9 members. The functions or rather the duties of that committee were in a general way to find out the state of the market, the trade conditions, and to make an analysis of conditions generally and report to the association as to their findings. They sometimes made their reports to the association in the meetings, sometimes by mail to the association. I sent out the reports of that committee to the members of the association and when the reports were made verbally at association meetings [fol. 170] I might reduce them to writing or they might be referred to in the minutes of the meetings. Anyway, I circulated them among the members of the association.

I couldn't say positively from what sources this committee got its information. I suppose from all sources. The committee ascertained from past transactions what the prices were at which maple flooring was being sold.

Q. They never thought about future transactions?

A. It is pretty hard to forecast the market.

Q. That is what you were driving at weren't you? Your future transactions were the things that interested you and the members of the association?

A. Not in the way the market conditions committee functioned in latter years. They simply wanted to find out what the market was or had been.

Q. Now as I understand this committee studied the past transactions.

A. Yes sir.

Q. For the purpose of determining future transactions?

A. I wouldn't say that. No, sir.

They were not going out of business and the object of the inquiry about past transactions was to ascertain what the market was. They wanted to know what the market was for the information of the members of the association, to be used as the members saw fit.

Q. To be used in the future?

A. Not unless a member desired to use it in the future. There was no obligation.

Q. Wasn't going to use it in the past when the past was already gone.

— . — . Now, Mr. Keehn —

[fol. 171] The Court: I suppose Mr. Keehn all of this information was disseminated among members in order to aid them in determining what their course should be and necessarily, of course, in the future, wasn't it?

A. It was a source of information to them.

The Court: Upon which he might act?

A. He might act or might not act.

The Court: In conducting his business?

A. They could act or not as they chose.

I think the documents you hand me, the first of which is dated December 19, 1913, and the last of which is dated October 28, 1921, are mostly market conditions reports, although there may be other documents. All these reports were sent out by my office.

I wouldn't say that the Market Conditions Committee was succeeded by another Committee, but a new committee was created called the "Cost Surveys Committee". It has been operating in accordance with the articles of association of January 1, 1922.

(The documents last above mentioned were marked Gov. Ex. 18, 18-A to 18X inclusive and received in evidence.)

(Witness temporarily withdrawn.)

SIDNEY L. EASTMAN, being first duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I live at Saginaw, Michigan. I am jobbing maple flooring, hard wood lumber and one or two other things. I do not manufacture

maple flooring and have not manufactured any since March 1st, 1917.

(Cross-examination by Mr. Johnston:)

I purchased the maple flooring sold by me from different manufacturers in Michigan. I bought from four different manufacturers [fol. 172] and have solicited quotations from a number of others. In 1917 my mill burned. In soliciting prices from various manufacturers of maple flooring I have found that there are hardly any two prices alike. There is always a variation on most purchases I make. At times the prices vary anywhere from \$2.00 to \$10.00 a thousand on the same size and grade. Most of our flooring is largely for export. I have to charge a higher price in order to take care of expenses incidental to export business. I have made the largest purchases from Kerry & Hanson Flooring Company of Grayling, Kerry & Way Manufacturing Company of Saginaw, the East Jordan Lumber Company, and the West Michigan Flooring Company. Before 1917 I belonged to the Maple Flooring Manufacturers Association.

IRA SCHEIFLEY, being first duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I am the Assistant Treasurer of the Lobdell-Emery Manufacturing Company at Onoway, Michigan. It is not engaged in the manufacture of maple flooring at the present time, it having discontinued such manufacture about 1915. We make maple lumber and sell it to the trade.

(Cross-examination by Mr. Johnston:)

We discontinued the manufacture of maple flooring because we needed our mill space for other business. We have another company called the American Wood Rim Company that manufacturers [fol. 173] bicycle rims and automobile steering wheels and we needed this floor room for the manufacture of steering wheels. There was more money in that than in the manufacture of maple flooring.

D. G. FITZGIBBON, being first duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I live at Cedar Springs, Michigan, and am connected with the A. L. Dennis Salt & Lumber Company. Neither company is now engaged in the manufacture of maple flooring. The A. L. Dennis Salt & Lumber Company has not manufactured any maple flooring since 1919.

(Cross-examination by Mr. Johnston:)

Formerly the A. L. Dennis Salt & Lumber Company manufactured maple flooring at Big Rapids. It has not been a member of the Maple Flooring Manufacturers Association since 1915. The dry kiln at Big Rapids burned down and we did not care to rebuild it. We do not handle maple flooring at the present time and have not jobbed it for a good while.

It was stipulated by counsel for the defendants that the Morgan Sash & Door Company had not manufactured any maple flooring for 15 years.

GEORGE W. KEEHN recalled for further direct examination:

The references in the reports to the "M. P. P." plan mean the "Minimum Price Plan", and "M. P. B." means the "Minimum Price Basis."

Q. When did you quit talking about the Minimum Price Plan?

A. Well, I think early in 1920, or the fall of 1919.

Q. And how long had you been talking about the Minimum Price Plan before that?

[fol. 174] A. I think it was submitted to the Government in July, 1916.

Q. When did you first begin to talk about the Minimum Price Basis?

A. In either December or January—in December, 1920, or January, 1921, I should say. It may have been earlier than December, 1920.

You put two Minimum Price Plans in evidence. You put one in evidence that was dated July 1, 1916, and then you put another one in evidence that was dated, I think, July 1, 1919, which was a reprint of the other one, as a plan pending before the Department of Justice and the Federal Trade Commission.

The Court: You are the man that helped devise them, aren't you?

Q. Wasn't it sent out through you?

A. It was sent out through me, yes sir.

Q. You read it over and over?

A. Yes.

Q. You were, then, thoroughly familiar with it?

A. Yes.

Q. You haven't forgotten all about it?

A. Not all about it, no.

The M. P. B. which was submitted to the Department of Justice and the Federal Trade Commission in January, 1921 was simply a statement of business policy that selling prices of flooring should be based upon costs. It went on to outline the fundamental principles upon which this should be done, and it was submitted to the Department of Justice and the Federal Trade Commission, January

29, 1921. It was simply a statement of policy which the manufacturers of maple, beech and birch flooring should use as a source of information in marketing their product.

[fol. 175] Q. That is, this Committee, Marketing Committee, I believe it is called, was to make up a cost, is that it?

A. Yes.

Q. And they were not to sell under what they should determine the cost was to be?

A. It was in the original M. P. P., Minimum Price Plan.

Q. Was that in the second Minimum Price Plan?

A. It was simply a statement of policy that provided no penalties or anything like that. A member could do as he pleased in regard to selling his flooring.

The Court: I wish this witness would tell us what you did under those plans? That is what we are trying to get at ultimately?

A. I think it would be necessary for me to see a copy of the plan in order to refresh my mind on it. It is a very voluminous thing.

Q. You have that plan first adopted before you. State what you did on that plan.

A. The Market Conditions Committee made surveys of manufacturing and marketing costs from time to time.

[fol. 176] They requested the members of the Association to submit a detailed statement of their manufacturing and marketing costs, listing about ten or twelve different items. This statement was requested to be made quarterly. Members of the Association were also requested to make test runs. A test run is made as follows: A given quantity (500,000 or 1,000,000 feet) of rough lumber of various grades, such as No. 1 Common, No. 2 Common, and some No. 3 A Common is processed into flooring. An accurate record is kept of the quantity of rough lumber used and the amount of flooring of each grade and dimensions that is produced. Seven or eight different test runs made by the different members of the Association are assembled. Then a comparison of the cost of the rough maple lumber per thousand feet of flooring produced is made. In the manufacture of flooring there is ordinarily anywhere from 20 to 30 per cent waste. By this means we find out how much 1,000 feet of flooring costs. For example, we will say that a thousand feet of the rough maple lumber averages \$40.00 a thousand. If the flooring product is 20 per cent waste, we would then get 800 feet of flooring from the rough lumber, the cost of which would be \$50.00. If the manufacturing and marketing cost at that time was about \$15.00 a thousand, that would make a total cost of the rough flooring lumber processed into flooring, including the manufacturing and marketing costs of \$65.00. If a profit of ten per cent was expected to be realized in selling the flooring as a legitimate profit. [fol. 177] then about one-ninth would be added to the \$65.00 and bring the selling price to about \$72.00 or \$73.00.

Now take this flooring product on the other side of the sheet, that is all very carefully analyzed and very carefully put together, and then we go on and figure out the approximate relative cost of

the different faces and grades and thicknesses of the maple flooring product, then we extend those on a percentage basis and if the cost of this flooring manufactured is \$72 or \$73, the right hand side of the sheet is supposed to equal \$72 or \$73.

Q. That information distributed among all the members?

A. That is distributed among all the members of the Association and we have some examples here which very particularly figure it out and how we use certain costs and how in case one member's costs are abnormal on account of having a light production of flooring we don't use that in making the average, because it would show an artificial manufacturing and marketing cost.

Q. One element of cost was 6% upon the invested capital?

A. Yes, and we followed the proposal—

Q. How long was it that you sent out reports based upon that minimum price plan?

A. You mean tables illustrating it?

Q. Yes.

A. That was done quite a good deal, not always in a test run, sometimes in the form of a table, average table of values based upon average cost.

Q. I show you three sheets. It is headed—the first one is headed: Listings of M. P. P. Surplus Stocks, and the First Listing appears to have been in 1917. I wish you would explain what that sheet is, what those sheets are.

[fol. 178] A. In Article No. 7 here this so-called Minimum Price Plan we go on to say in case any member of the Association shall have on hand any maple, birch or beech flooring which he is unable to market at the Minimum Price at that time in force under this agreement or is unable to sell the same to any other member of the Association without regard to such Minimum Price, then he shall offer such flooring to the members of the Association through its Secretary stating the quantity and kind and the price at which he is willing to sell such flooring which price may be minimum price and in case such flooring is bought by any member of the Association then the member buying the same shall not sell such flooring at any price less than minimum price then in force under this agreement, but in case such flooring is not bought by any member of the Association within thirty days after the same has been so offered to the members of Association through its Secretary, then the members so offering to sell such flooring may sell the same in the open market at any price provided such price be not less than the price at which you offered to sell the same to members of the Association through its Secretary.

By the Court:

Q. That means just this, does it not, if any member of the Association has a surplus?

A. Yes.

Q. And is unable to sell it in the general market at the minimum

price he may offer it to any other member of the Association at a lesser price?

A. Yes, sir.

Q. And if another member of the Association purchase it, he is required then to sell it at the minimum price?

A. Yes.

[fol. 179] Q. And if another member of the Association does not purchase it, then the original holder is entitled to sell it at a price not less than the amount for which he offered it to an associate member?

A. Yes, sir.

The Court: Very well.

— . — . — .

A. Now the first listing I think carried a concession of \$1.00, then if the flooring didn't move he could make a second listing, reduce it \$2.00, then if the flooring still did not move, he could make a third listing and reduce it \$3.

Q. The sheet that you have there showed the first, second and third listings?

A. Yes, shows the first, second and third listings.

(Document filed as Gov. Ex. 19.)

Another provision of the minimum price plan was that if a member sold flooring at less than the minimum price, he was to pay into the expense fund of this Association ten per cent on that sale. As a matter of fact, no penalties were ever exacted from any member of the Association under the minimum price plan and no criticisms were ever made to any member of the Association either by the secretary's office or by any other member of the association regarding any prices at which he sold his flooring.

The Court: That was all under your Articles of Association of 1916?

A. We had two elements, we had Articles of Association which contains certain features, then we had these so-called minimum price plans which were sort of supplemental to the articles.

The Court: That was during the period of—

A. 1916 to 1917. Afterwards, as I said before, it was extended dated January 1st, 1919.

[fol. 180] The Court: It was the same plan with modifications?

A. With modifications, yes, sir.

Mr. Fowler: Have you explained both of these minimum price plans; you said there — two of them?

A. I think the other one, if I may have it, is in a yellow cover; it is simply a reprint of this with certain modifications.

The so-called Minimum Price Basis is dated January 6, 1921, and is Government Exhibit 13 and that provided for establishing the values of flooring on a cost basis similar to the one in a previous Minimum Price Plan, but I think the interest on the capital invested was made six per cent instead of five per cent. This Minimum Price

Basis provided for no listings whatever, provided for no penalties whatever, as the other one did. We did not exact any penalties of any kind under the Minimum Price Plan, but in the Minimum Price Basis no penalties of any kind were even prescribed. It is simply a statement of business policy and was for handling the sales of maple, beech and birch flooring. The statement of the policy is described in the instrument.

We did not always file the Market Conditions Committee reports with the Federal Trade Commission. I think we did file some of them, and that we have a record of some that we filed. I do not think we ever filed them with the Department of Justice, but I think we gave them to the agents of the Department of Justice when they were investigating, but I wouldn't be certain as to that. I have a complete list of the documents we have given to the Federal Trade Commission and the Department of Justice investigators, except that I did not take a list of what I gave to Mr. McCaig in 1919.

The Court: Will you permit me a question? If I understand you, with the exception of a declaration that penalties would be imposed [fol. 181] or might be imposed, the method of obtaining the cost of production and selling was the same under these two plans, that is, the Minimum Price Plan and the Minimum Price Basis, as you call them, and the information furnished members of the Association was the same information, in substance?

A. In substance the same basis was used in arriving at the average cost of producing and marketing flooring with the exception of the interest rate that I mentioned.

The Court: Then, the difference would be, the substantial difference would be that in the one case, in form at least, you required it, and in the other you advised it?

A. I wouldn't say that we advised it. We gave it to the members to use in such way as they wished to use it.

The second plan, the Minimum Price Basis, was never proceeded with. It was a proposed plan rather than a tentative plan.

Q. You say now, Mr. Keehn, that that Minimum Price Basis was never put into effect at all?

A. I would say so, Mr. Fowler. It might have been in effect for a day or two, or four or five days. It only took two weeks before we heard from Mr. Nebeker on that subject.

Q. What was the date of that letter?

A. I think it was February 6th, and I think it was submitted January 29, 1921. We have all that correspondence.

Q. I show you a sheet here that is entitled "Maple Flooring Association, Record of Completed Transactions as of date January 13, 1921."

A. Yes.

Q. What is that sheet?

A. Those are the weekly sales reports. Report of sales made during the week ending January 8, 1921.

[fol. 182] Q. That was one of the reports that you sent out?

A. Yes sir.

(The paper referred to was marked "Government Exhibit 20" and received in evidence.)

Q. I wish you would look at that report and state if it does not show on its face what the minimum Price Basis was?

A. Yes, it does.

Q. That is, the information that is given on that report is, first, date; second, quantity; third, description; fourth, delivered price; fifth, new index letters; sixth, Minimum Price Basis; seventh, commissions, and eighth, mills reporting.

A. Yes.

Q. That is the information that is given there?

A. Yes sir. Some of the members may have operated under it for a short time pending our hearing from Mr. Nebeker.

Q. You were operating under it any way because you sent it out through your office, didn't you?

A. We sent it out through our office on January 6, 1921.

Q. I show you another sheet that is dated January 27, 1921. What is that, omitting the figures in pencil that are on there?

A. That is a record of completed transactions, reports of sales made during the week ending January 22, 1921.

Q. A similar report to the one I just handed you?

A. Yes sir.

(The paper in question was marked "Government Exhibit 21" and received in evidence.)

Q. Isn't it a fact that that report is made in the same way and shows the Minimum Price Basis on it?

A. Yes sir.

Q. So you were operating under it when that report was sent out?

A. Possibly for two weeks or three weeks before we heard from [fol. 183] Mr. Nebeker. As I said before we perhaps may have operated under it.

This other sheet, dated February 3, 1921, is a report of completed transactions for the week ending January 29, 1921.

(The paper in question was marked "Government Exhibit 22" and received in evidence.)

In 1921 each member of the Association was assigned a number for convenience in keeping our records. Any member of the association would know, for instance, what was meant by "No. 24, Group A." The giving numbers to the members has been in force since 1905. The group indicates the territory. Group A would be Eastern Lower Michigan. The members were divided into groups just to show the location of the plants, the members of a group being located in the same territory, but not in the same town. There was no particular benefit except to show the location of the plant. All our reports are made that way on average cost and average prices realized. The groups are: Eastern Lower Michigan, and Western Lower Michigan, and Upper Michigan and Wisconsin. The groups did not have anything to do with freight rates.

Q. Were you operating under that Minimum Price Basis in December, 1920.

A. No sir.

Q. Or in January, 1921.

A. For a very short time until we heard from Mr. Nebeker. The members may have been considered to have operated under it.

The Minimum Price Basis before the present articles of association were adopted was not made by the Market Conditions Committee, but I made the compilation myself from the reports sent in to the office by the members of the Association. Sometimes the Market Conditions Committee obtained the information through me, as [fol. 184] Secretary of the Association. We got the information regarding costs from the reports made by the members of the Association who sent in itemized statements of costs according to a survey, which we have of marketing and manufacturing costs, consisting of about twelve or thirteen questions. I sent out these questionnaires to ascertain the average cost of manufacturing and marketing flooring; then the information regarding the values of rough maple lumber as established by sales on the open market was obtained by the Market Conditions Committee from the various members of the Association. The questionnaire sent to each member of the Association was intended to cover every element of cost. This sheet, entitled: "Survey of Costs, Third Quarter 1922" is the kind of questionnaire I have been referring to. We have been using it for a great many years, perhaps eight or nine or ten years, and we are still using it.

(The paper referred to was marked "Government Exhibit 23" and received in evidence.)

When an estimate of cost was made we also had the market value of the rough lumber as established by sales in the open market. We might have such information from the lumber trade papers or from sales made by saw mill operators of flooring lumber on the market or from members of the Association who had purchased the rough lumber on the open market. We used all sources of information. This information was sent in by members of the Association, sometimes to me, sometimes to the Market Conditions Committee, all for the use of the Market Conditions Committee. Sometimes during [fol. 185] the past year we would get this information at meetings of the Association by asking each one what he was paying for rough maple lumber on the open market, actual sales. The Committee on Cost Surveys ordinarily came to the conclusion as to what information was to go out in my reports to the members. The cost of rough maple lumber was taken by using several purchasers—five, six, eight or ten—and we might take the average the same as the Government does in compiling its data regarding the value of rough maple lumber on the open market. The information from which we figured out the cost of production came from the members of the Association. We had no information from non members regarding their cost of production. Referring to Gov. Ex. 23, we use the same form

but employ different calculations. We are still sending out the questionnaire above referred to and by means of them ascertain the average of actual costs. The Cost Surveys Committee does not perform exactly the same function as the Market Conditions Committee did. The Committee on Cost Surveys simply go into the cost of the raw material, the cost of marketing and manufacturing, and takes no notice of any kind of the selling price of flooring. Under the present Association we make an estimate of the cost of flooring by taking the market value of the rough lumber and the other elements as provided in the Articles of Association. For instance, referring to the document you hand me (Gov. Ex. 24 to 24-R inclusive, which were thereafter received in evidence): There is the average cost based upon composite runs, five test runs. These were made as follows: one made in January, and February, 1922; one in December 1922 and three in January of 1923. This particular lot, these 5 test runs, are assembled together, as you will see, on this paper; one test run made by Mitchell Brothers Company; another [fol. 186] by Kerry and Hansen Flooring Company; another by the East Jordan Lumber Company; one by the Grand Rapids Trust Company; receiver for William Horner—two as a matter of fact; and one by the Bigelow-Cooper Company. In this test run one member used 176,000 feet of number one common. That included a very small percentage of firsts and seconds, which do not enter into the calculation, because it would be negligible. No. 24, that is Mitchell Brothers Company used 176,000 feet No. 1 Common, 71,000 feet of No. 2 Common, a total of 247,000 feet of rough lumber used. Out of that he got 108,000 feet Clear; 55,000 No. 1; 126,000 feet Factory; 20,841 feet of other product, a total of 196,000 feet. The waste was 50,840 feet or 20.5%.

No. 24, Kerry and Hansen Flooring Company used 276,000 feet No. 1 Common; 155,000 feet No. 2 Common; 170,000 feet No. 3 Common, making a total of 601,000 feet of rough lumber. They got out of that 117,000 feet of Clear; 235,000 feet of No. 1; 82,500 feet Factory, a total of 435,000. They had a waste of 166,000 feet or 27.6%.

No. 26, East Jordan Lumber Company used 21,000 feet of No. 1 Common; 13,000 feet No. 2 Common; 2,500 feet No. 3 Common A; 11,000 feet of No. 3 Common, a total of 47,000 feet. The product was 13,000 feet Clear; 13,000 No. 1; 12,000 Factory, a total of 37,000 feet. The waste was nearly 10,000 feet or 20.8%.

No. 47, that is the Grand Rapids Trust Company, Receiver for William Horner, used 68,000 feet No. 1 Common; 3,200 feet No. [fol. 187] 2 Common; 10,000 feet No. 3 Common A; total of 111,000 feet. The flooring produced was 47,000 feet Clear; 34,000 feet No. 1; 11,000 feet of Factory, a total of 92,000 feet, and a waste of 19,000 feet or 16.8%.

Bigelow-Cooper Company used 7,400 feet Selects; 30,600 feet No. 1 Common (we put the two together because while Selects are worth \$10.00 a thousand more than the No. 1, the total would be negative when you get at the end); 33,000 feet No. 2 Common; 15,000 feet No. 3 Common A; total 83,500 feet. The flooring product was

31,000 feet Clear; 28,600 feet No. 1; 11,000 feet Factory, a total of 70,000 feet. The waste was 15,900 feet, or 18.4%.

Now we throw these all together in one calculation, making a total quantity of No. 1 Common of 579,000 feet or 53% of the total; No. 2 Common 305,000 feet or 28% of the total; No. 3 Common A 28,000 feet or 2.6% of the total; No. 3 Common 180,000 feet, or 16.6% of the total, making a grand total of 100%.

Now the Clear Flooring that came out of that was 315,800 feet or 38%; 366,000 feet of No. 1, or 44%; Factory 129,000 feet or 15.5%; other product 20,800 feet or 2.5%; total product 831,869 feet. The total waste is 261,200 feet or 24%, an average of 24% waste.

Now on the test run made July 19, 1923, that is the average cost table based upon that, that was exactly the same calculation, 53% No. 1 Common; 28% No. 2 Common; 3% No. 3 Common A; [fol. 188] 16% ordinary No. 3 Common, making a total of 1,093 thousand feet, reduced to percentages.

The present average cost of rough flooring lumber at the flooring mill at that time, according to the best information the Survey Committee could obtain was \$64.00 for No. 1, \$44.00 for No. 2, \$32.00 for No. 3 Common A, \$24.00 for No. 3 Common. This calculation is extended to show the cost of a thousand feet of lumber.

The Court: Of the average cost of rough flooring lumber. You do not give out information in detail as to where that was obtained from?

"A. No, we got it from the committee on Cost Survey, or it might — talked over in the meeting of the Association."

Mr. Darby: But the actual sales are on the open market?

"A. They are the best information people can get as to it. Then we found a thousand feet of lumber of this character enumerated, manufactured into flooring, cost at the flooring mill \$51.04. Now we got 760 feet of flooring out of the thousand feet of lumber, so the 760 therefore cost \$51.04; a thousand feet cost \$67.16. Manufacturing and marketing cost first quarter of 1923, the average was \$17.85, and I will show you that, Your Honor, in a minute. Consequently the average cost f. o. b. flooring plant of 1,000 feet of flooring sold was \$85.01.

The approximate relative average cost of flooring product f. o. b. [fol. 189] at flooring mills the previous classes of rough Maple lumber, we find we have 38% Clear; 44% No. 1; 15% Factory and 3% of other products, and that the waste was 24%.

Now, we find in the grades and faces the 13/16" x 1½" Clear amounted to 15,500 feet or approximately 2%; the 13/16 x 2" amounted to 12,000 feet, or 1.4%; the 13/16 x 2¼" amounted to 227,000 feet, or 27%; the 13/16 x 3¼" amounted to 27,000 feet, or 3.2%; the 13/16 x 4" amounted to 13,000 feet, or 1.6%; the jointed flooring amount to ½ of 1%. So, the total Clear product out of that stuff was 38%. Now, we find the No. 1 production was about 12,000 feet of the 1½" or a little over 1%; the 2" face about 14,000 feet or 1.7%.

The Court: It is not necessary to go into all of that detail. It is a total of 44%.

"A. Yes. When this tabulation was sent out to the members July 19, 1923, we had omitted to eliminate from our Articles of Association the 5% which was put in to cover matters incident to manufacturing operations.

Now, we come to November 10, 1923, with exactly the same information, and according to the best information obtainable through the Committee on Costs, there appears to have been a decline in the average cost of rough flooring lumber of \$7.00 per thousand. So this is made on the basis of 57, 37, 27 and 20 dollars, and all these relative costs of the flooring product were horizontally reduced \$8.00 a thousand. In other words, on July the 19th, this flooring [fol. 190] product cost \$85.00. On account of the decline in the market value or cost of the rough lumber it comes down to \$77.00, so that makes a difference of \$8.00, while the decline in the lumber is \$7.00. On account of the waste in the flooring it amounts to \$8.00 on the other."

Mr. Johnston: Do any of these figures contain any element of profit?

"A. None whatever."

Mr. Johnston: Those are all cost figures?

"A. All cost figures. It so happens they accord very closely with the prospectus sent out in 1913, which was referred to in our petition to the Federal Trade Commission, the way the Government sells its timber, and we will bring that up later."

The Court: What you are lacking thus far, is the details of the manufacturing costs.

"A. Yes."

The Court: And selling costs.

"A. I am going to get to that now, your Honor. Suppose we use this one as an illustration, the one of November 10, 1923. November 10, 1923 we have a manufacturing and marketing cost, the third quarter of 1923, \$18.34. Here are the reports of the members of the Association who made these reports."

The Court: You take into consideration all of the reports which you received from your members.

"A. All of them."

Mr. Darby: Not all of them.

[fol. 191] "A. Except in this case, we had the report from the Grand Rapids Trust Company, Receiver, for William Horner, showing their cost was \$34.81, and we concluded that was abnormally high, so we omitted it from this calculation. If we put their cost in to get the average, our average marketing and manufacturing would have been about \$21.00, and we would have been justified in using it instead of \$18.34."

Mr. Fowler: They are sometimes abnormally low.

A. We always put in the low ones."

Mr. Fowler: Always exclude the high ones.

"A. When they are shut down or something like that. This is a fair illustration; there we have the actual manufacturing and

marketing cost on this schedule, which I will read to you. 'Survey of Costs.'"

The Court: This is your questionnaire.

"A. Yes. 1. Labor taking lumber off of dock, car, pile or wagoir, and placing in dry kiln, including expenses of night firemen.

2. Cost of manufacturing into flooring and putting flooring in warehouse, including twine, oil, belting, and other factory supplies, and factory repairs and including manufacturing administrative expenses."

The Court: Just what does that mean, office expenses, for instance.

"A. Yes."

The Court: Salary of the General Manager, and so on.

"A. Yes."

The Court: Commonly called overhead.

[fol. 192] "A. Or a proportion of it, in case they have other business."

The Court: Your member in making his report makes that division?

"A. Yes, he makes that division."

3. Warehouse expense and loading into cars, or on wagons.

4. Insurance and taxes. (Divide $\frac{1}{4}$ of annual amount by quantity of flooring produced during July, August and September.)

5. Interest at 6% on value of plant and on value of average stock carried of rough flooring lumber and of finished flooring. (Divide $\frac{1}{4}$ of annual amount by quantity of flooring produced during July, August and September.)

6. Selling expenses, including commissions and advertising and office expenses, including selling administrative expenses.

7. Cash discount.

8. Annual depreciation on flooring plant as is usually allowed by the United States Government. (Divide $\frac{1}{4}$ of annual amount by quantity of flooring produced during July, August and September.)

9. Total per M feet of flooring produced during this period.

10. Less net profit from wood and other by-products of flooring lumber, per 1 M feet of flooring produced during July, August and September.

11. Actual manufacturing and marketing costs per 1 M feet of flooring produced during July, August and September.

12. Quantity of flooring produced by us during July, August [fol. 193] and September.

13. Our percentage of waste in manufacturing flooring during July, August and September.

Now, we have this tabulation as to number five, Cobbs and Mitchell Company. I wonder if any objection will be made to this."

Mr. Darby: There will be no objection.

"A. We will read that number five, Cobbs and Mitchell, Inc., Total cost 16.44; less wood, etc. 1.09; actual manufacturing and marketing costs 15.35; percentage of waste $10\frac{1}{2}\%$.

No. 26, East Jordan Flooring Company; total cost 18.58; wood 1.22; actual manufacturing and marketing costs 17.36; percentage of waste 26.4%.

No. 34, Foster and Latimer Lumber Company; total cost 19.661, less wood, etc. 1.74; actual manufacturing and marketing cost 17.92; percentage of waste 27.6%.

No. 42, J. W. Wells Lumber Company; total cost 2.50; less wood, etc. 4.09; actual manufacturing and marketing costs 17.41; percentage of waste 31%.

No. 48, North Branch Flooring Company, total cost 26.60; less wood 2.92; actual manufacturing and marketing costs 23.68; percentage of waste 23%, a total of 102.78 in the first column; the wood is 11.06; actual manufacturing and marketing costs 91.72, and the [fol. 194] simple average total cost 20.55; less wood, etc. 2.21, and the actual manufacturing cost 18.34, and the percentage of waste it so happens is 24%."

Mr. Darby: Your Honor, may we read what the manufacturing cost of the Grand Rapids Trust Company, Receiver was?

"A. Yes, I am going to do that now. Here is the survey of costs third quarter 1923, manufacturing and marketing costs per thousand feet of flooring produced during July, August and September 1923. The same set of question and answers set opposite each question."

Mr. Fowler: What is the date?

"A. The date of their report is—our blank is dated October 5, 1923."

Mr. Newman: Whose report is that?

"A. Grand Rapids Trust Company, Receiver for William Horner. Their total cost figured at 37.34, less net profit from wood and other by-products for one thousand feet of flooring produced 2.53; actual manufacturing and marketing costs during July, August and September 34.81; quantity of flooring was yearly 3 million. Their waste was about 18%, so we did not use that in our calculation in arriving at the arithmetic average.

Mr. Darby: Was any explanation given you as to those costs?

[fol. 195] "A. I spoke to Mr. Klesner; he said he would try to look it up when he arrived home. It may be explained in their letter transmitting it."

Mr. Darby: They did not explain why their costs were high?

"A. No, I spoke to Mr. Klesner about it. This same method has been pursued at different times and we have a number of those calculations going way back to 1913, and of course, we can repeat them and repeat them, but the Government, I think, has a record of all these things; they have a record of every survey of costs that we could find in our office, going back to 1913, 1914, 1915, but you haven't any very recently; I think the last one I gave to Mr. Frank some time in May or June, 1922."

Mr. Newman: Who is Mr. Frank?

"A. A special agent of the Department of Justice. I think some of the others have been given in too; I can find out about it from our records."

Mr. Darby: I would suggest that we have those sheets marked. The Court: Those may be marked one number and then the

different sheets lettered in addition to the number; they all pertain to the same subject.

(Papers referred to were marked Government exhibit 24 to 24 R inclusive.)

[fol. 196] Q. Now you have explained in great detail your method of arriving at what you denominate as the cost price of lumber.

A. Yes, on the flooring.

Q. That method has been used for how many years?

A. I think we commenced, originally, in 1913 under what we termed "scientific list." That was based on the old work of the Market Conditions Committee.

Q. You have been using that same method since the same general principles and are using it today.

A. We are using it today.

We make those estimates from time to time according to when the market changes on rough lumber or according to when the manufacturing and marketing costs are changed. There is no definite period. We make them at very irregular intervals. I would say without looking it up we made perhaps three or four during 1922.

Here is a report dated May 31, 1922. It is the first one I find here and I assume it is the first one we sent out.

(Document in question was marked "Government Exhibit 25 25a and 25b" and received in evidence.)

The next estimate we made after May 31, 1922 was made October 25, 1922. That is the one I have here next. I am quite certain that none was made between May and October.

(Document mentioned was marked "Government Exhibit 26" and received in evidence.)

There was an estimate made on February 15, 1923.

(Document marked "Government Exhibit 27" and received in evidence.)

I wrote this letter dated February 16, 1923, addressed to members and it went out with the report of February 15, 1923 as stated in the [fol. 197] second paragraph of the letter.

(Letter marked "Government Exhibit 27-A" and received in evidence.)

Q. Of course, that information is sent to every member?

A. Every member of our Association received that information.

Q. Just as quick as that cost estimate is made it is sent out to every member?

A. To every member.

The sheets you give me are, I think, all test runs and analysis of cost and production, etc. They were all sent out by our office.

(Documents referred to marked "Government Exhibits 28 and 28-A to 28-T inclusive" and received in evidence.)

Q. Now, Mr. Keehn, did the Association ever have a freight rate book?

A. Yes sir.

Q. When did it first adopt a freight rate book, or when was the first Association that used it?

A. The defendant Association never adopted a freight rate book.

Q. I will come to that now directly. I want to know when did one of these Associations you have been testifying about do so?

A. A great many years ago, Mr. Fowler.

Q. Now, what do you mean by a great many years ago?

A. Ten, twelve or fifteen years ago.

Q. As far back as 1905, didn't it?

A. 1905 or 1906.

I was connected with the Association on April 1, 1905. I am very familiar with this paper "Prices on Maple Flooring effective April 1, 1905." We gave it to Mr. Lewis.

Q. What does it show?

[fol. 198] A. It is what it purports to be.

Q. What is that?

A. Tables of prices on maple flooring by geographical zones.

Q. What do you mean by geographical zones?

A. For example, by states or blanket price covering certain territory. For instance, say Maine, it would accept Portland rates.

Q. That is the price including the freight, is it?

A. Yes, sir, that is the price including the freight.

Q. In that certain zone?

A. In that certain zone.

(Paper marked Government Exhibit 29 and received in evidence.)

The Court: You have a number of those I take it?

A. Yes.

The Court: They will all be given the same number with letters.

(Similar papers marked Government Exhibits 29-A to 29-C, inclusive, and received in evidence.)

Q. That was used by the Association that was in existence at that time?

A. I presume it was.

Q. You had nothing to do with that?

A. I was Secretary of the Association, at that time.

Q. Then don't you know that it was?

A. It depends upon how you mean it was used.

The papers you hand me are charts showing the delivered prices or values of maple flooring. One is dated March 1, 1907, the other is dated October 1, 1907, October 27, 1909, January 27, 1910, September 14, 1910, October 18, 1911.

(Documents above mentioned were marked "Government Exhibits 30, 30-A to 30-E" inclusive and received in evidence.)

I do not think I have the rate book for 1913. I might possibly have it but I am not certain. Whatever rate books we had in our [fol. 199] possession at the time Mr. Lewis came to see us and asked for we gave to him. We gave him the first original rate book, which was a very meager and primitive affair, and was dated 1906 to 1907. Mr. Lewis sent it back to me as a sort of souvenir, but I don't know where it is now. I presume there was a rate book issued in 1913, but I could not be positive about it. The small book you show me designated "Rate Book, Copyrighted 1916 by Maple Flooring Manufacturers' Association, Chicago" was got out by the Association existing at that time, and was distributed among all the members. It is copyrighted in 1916 by Maple Flooring Manufacturers' Association, and the copyright date on it is June 16, 1916, and the table of values which appears in the back is dated May 15, 1916. The index letter following the name of each town indicates the rate of freight from Cadillac, Michigan to the various points. We do not consider that Cadillac is taken exactly as the base. The rate of freight from Cadillac to about thirty or forty or fifty representative markets in the United States happens to be about the same as the average rate of freight from the seventeen producing points in Michigan and Wisconsin. In this particular book it is true that all the freight rates are estimated from Cadillac because we simply took the rate of freight from Cadillac in having it compiled. It shows the rate of freight from Cadillac to five or six thousand points or seven or eight thousand points, scattered all over the United States. [fol. 200] Q. If they were going to ship to a point, right near a point that is mentioned in there, or not mentioned, they would refer to the nearest point, would they?

Mr. Darby: We object to that.

Q. Well, is that true, or not?

Mr. Darby: We object to the question because Mr. Keehn is the Secretary of the Association; he shipped no flooring, and what some member would do he would not know.

The Court: He can tell us he don't know, if he does not.

A. You would have to ask the member for that information.

Q. You don't know?

A. I don't ship any flooring or sell any.

Q. I don't care if you ship any or not, do you know?

A. Not of my own knowledge.

Q. Well, what did the members tell you?

Mr. Darby: We object to what the members told him, immaterial and hearsay.

The Court: No, you may answer.

A. We will cover that by the members that know.

Q. Did the members tell you?

A. They did not. According to the best of my knowledge and belief at this time, I did not know what they did in 1916.

Q. Is that all the information that that book contains, just the freight rate from Cadillac to that point?

Q. We have not finished that part of our story yet.

Q. Then finish it.

A. Do you wish the Table of Values?

[fol. 201] Mr. Johnston: I don't see why counsel, examining Mr. Keehn as his witness, should assume any such attitude. I object to the method of examination.

The Court: Proceed.

Q. What is the balance of the information?

A. The balance is the table of values.

Mr. Darby: Explain to the Court what that table of values is.

Q. The table of values illustrates the delivered values of flooring to certain destinations.

Mr. Darby: What is that composed of, what figures?

Q. Well it is composed I would say of the cost elements and so forth that enter into it.

Q. Does that mean the values reached in the manner that you have explained in detail?

A. I think this covers the so-called minimum price plan of July 1st, 1916, in which reference is made to the table of values of May 15, 1916.

Q. Then that book shows what you call the cost price?

A. Plus the freight.

Q. Of the lumber, plus the freight to those various points, from Cadillac.

A. Yes.

Q. Now that is what it shows.

A. Yes.

Q. Then you say it has an index.

— — —

Q. What are those letters on that book, what do they mean?

A. The index on this book indicates the rate of freight from Cadillac, Michigan, to the towns.

Q. What do you mean by "index letters."

— — —

Mr. Darby: Tell the reason for that.

Q. Please answer my question.

[fol. 202] A. A is one; B is two; C is three; D is four; E is five; F is six; G is seven; H is eight; I is nine; J is a cipher.

Q. What are those letters used for those figures?

A. It is more convenient, there are lots of fractional rates of freight as it states there and everything like that.

Q. Why didn't you just illustrate that as one, two, three, four, whatever it is and not use a letter.

A. We could have done it just as well that way but thought it more simple in printing to use B instead of 45. Then besides, those rates take a certain grouping, where 45 might represent $44\frac{1}{2}$, $45\frac{1}{2}$, such things as that.

Q. Would EE represent the $44\frac{1}{2}$?

A. EE would represent 55. We could have used figures just as well but just did this as a matter of convenience.

Q. You found it convenient to use those letters instead of figures.

A. I presume we must have followed some old custom somewhere.

Q. Well did you?

A. There is no particular advantage in using figures instead of letters, or letters instead of figures.

Q. As a matter of fact those letters are still being used aren't they?

A. Those letters are still being used.

Q. Have been ever since.

A. Ever since.

Q. Now when another estimate of costs has been made before the issuance of another freight rate book, what did you do?

A. Well we might have put in a sheet or might have issued a new table of values.

[fol. 203] Q. Well you would do one or the other?

A. One or the other, ordinarily.

Q. That is, you would send to each member a sheet showing this new estimate?

A. New estimate, yes, sir.

Q. So he could use that in connection with his freight rate book?

A. He could make such use of it as he desired. Simply sent to him for his information.

Q. When did you get out the next book after that?

A. If you have it there—this is May 15, 1916.

[fol. 204] (The freight book of May 15, 1916, was marked Gov. Ex. 31 and introduced in evidence.)

The two small printed sheets which you show me called "Tables of Values, Freight Rates 4-14" was dated January 26th, 1917. I have an impression that it was for the back part of those rate books.

(The two sheets above referred to marked Gov. Ex. No. 32 and received in evidence.)

I think we had a freight book dated March, 1920. I think a copy of it was sent to the Federal Trade Commission. I have not the original. The sheets of paper you hand me appear to be photographic copies of pages 83 to 95 of such a book. As to whether or not they are correct, I cannot say.

(Sheets above referred to marked Gov. Ex. 33 and received in evidence.)

I think I sent a copy of this rate book to the Federal Trade Commission. Another book entitled, "Rate Book, Maple Flooring Manu-

facturers' Association,' I should say was adopted by the Association that was then in existence.

[fol. 205] (Said book marked Gov. Ex. 34 and received in evidence.)

The book last mentioned shows the value of the flooring and the freight rate from Cadillac to the various points or the average freight rate from those seventeen producing points. The book in question is a loose leaf book and when new average cost charts are made, new sheets would be prepared and sent to the various members. Sometimes the rate of freight is changed and a new compilation is made of the freight rates. New sheets would be sent out to members for insertion in the loose leaf book. The book you show me entitled, "Rate book, Freight Rates and Index of Towns, Copyrighted, 1922, by Maple Flooring Manufacturers' Association, Chicago," was never formally adopted by the present Association by any formal action. It was printed and sent out by me, but the Association never formally adopted it in any way. I would say that I had authority to send it out. The Association's money paid for it and it went to every member. The book last mentioned contains a delivered cost chart, including average cost of freight to destination. It reads, "Includes average cost of freight to destination." Under our present method we arrive at an average cost f. o. b. flooring plant for 13/16 by inch and one half and two inch and two and a quarter and three and one quarter. Then the average rate of freight gives us the average cost of freight to destination and is added to the average cost of the flooring. The average cost of the freight is the average cost of the freight from the different flooring mills. It so happens that the freight from Cadillac represents the average rate of freight.

[fol. 206] Q. And it is all really from Cadillac.

A. To save the inconvenience of getting freight rates from 17 different points and averaging them.

Q. As a matter of fact, the freight rate that is given there is not the actual freight rate from a single flooring mill is it?

A. Yes, there are three flooring mills at Cadillac and one or two flooring mills near Cadillac that take practically the same rate as Cadillac.

Q. Then it is the actual rate from about five mills.

A. I am not certain about that, but I think it might be. I can look that up for you.

Q. But is not the freight rate from 17 mills.

A. It is the average freight rate from 17 mills.

Q. It is not the actual freight rate from 17 mills outside of Cadillac is it?

A. Yes.

A. We will show you a tabulation; we will show you a list of the freight rates.

Q. Will you answer my question, and let me stand between you and Mr. Darby. Will you answer my question as to whether or not that shows the actual freight rate from a single mill that is outside of Cadillac?

A. It does, yes.

Q. Which one?

A. I think Manistee, Michigan.

Q. Which one?

A. Manistee, Michigan.

The Court: That happens to be the same rate as the one from Cadillac.

A. And perhaps Reed City, maybe, but I won't be certain of that. However, I will show you a chart giving you the rates of freight from all different towns and you will find some alike.

[fol. 207] (Freight rate book last mentioned marked Gov. Ex. 35 and received in evidence.)

The chart of freight rates above mentioned contains the rates of freight on Maple flooring, carloads, from Michigan and Wisconsin mills. Here is Albuquerque, New Mexico. Bay City, 85; Grayling, 85; Saginaw, Michigan, 85; Cadillac, Michigan, 85; East Jordon, 85; Grand Rapids, Michigan, 85; Manistee, 85; Reed City, 85; Gladstone, 80; Hermansville, 80; Menominee, 80 cents; Newberry, 80 cents; Wells, Michigan, 80 cents; Blackwell, Wisconsin, 80 cents; Mellen, Wisconsin, 80; Oconto, Wisconsin, 80; Phillips, Wisconsin, 80 cents. Now we get the average of those forty different points. The average rate of freight from Bay City, Michigan, to forty different points, geographically, is 40.8 cents; from Grayling, Michigan, 50.6; from Saginaw, Michigan, 48.1; From Cadillac, Michigan, [fol. 208] it is 50.4; from East Jordon 53.7; from Grand Rapids it is 48; from Manistee, Michigan, it is 50.6; from Reed City it is 49.9; from Gladstone it is 48.9; from Hermansville it is 49; from Menominee, 47.4; from Newberry, 50.2; from Wells, Michigan, it is 48.9; from Blackwell, 49.9; from Mellen, 50.6; from Oconto, 47.3; Phillips, 50.1; and the grand average is 49.5 cents from all the points, and from Cadillac it is 50.4, a difference of nine tenths of one cent per one hundred weight, which would mean a difference of about eighteen cents a thousand.

Mr. Darby: Will you give the points, the consuming centers there, so that they will be in the record?

A. Albuquerque, N. M., Atlanta, Ga., Baltimore, Md., Birmingham, Ala., Boise, Idaho; Boston, Mass., Buffalo, N. Y., Butte, Mont., Chicago, Ill., Cincinnati, Ohio, Cleveland, Ohio; Dallas, Texas; Des Moines, Iowa; Denver, Colo., Detroit, Mich.; El Paso, Texas; Fargo, N. D., Indianapolis, Ind., Jacksonville, Fla., Kansas City, Mo., Louisville, Ky., Memphis, Tenn., Milwaukee, Wis., Minneapolis, and St. Paul, Minn., Nashville, Tenn., New Orleans, La., New York, N. Y., Oklahoma City, Okla., Omaha, Nebraska.

Pacific Coast terminals: Seattle, Portland, San Francisco, Los Angeles.

Philadelphia, Pa., Pittsburgh, Pa., Portland, Me., Richmond, Va., Salt Lake City, Utah; Spokane, Wash., St. Louis, Mo., Sioux Falls, S. D., Washington, D. C. Wilmington, N. C.

[fol. 209] The Court: As a matter of fact, your answer a few

moments ago when you said there was the same rate applied to Cadillac as applied to Manistee, was incorrect, was it not?

A. I will look and see.

The Court: You used the same average rate, but the actual rate is different.

A. We will take Cadillac. To Albuquerque; Manistee 85, Atlanta, Ga., 59.

Mr. Darby: No, make the comparison.

A. I am giving them both. I will start over again. I will give Cadillac first and Manistee second.

The Court: Well if they are both alike you don't need to.

A. There may be a difference in some territory.

The Court: That is what I mean.

A. Albuquerque, 85 in both cases; Atlanta, 59; Baltimore, Md., 42½; Birmingham, Ala., 51½; from Cadillac and 55½ from Manistee; Boise, Idaho, the same; Boston, Mass., the same; Buffalo, New York, the same; Butte, Montana, the same; Chicago, Illinois; Manistee has twenty and one half; Cadillac 24½; Cincinnati 31 and ½—I think in a majority of cases the rates are the same.

[fol. 210] (Said freight chart marked Gov. Ex. No. 36 A and received in evidence.)

I sent out a letter with this sheet that shows rates of freight on maple flooring in carloads from Michigan and Wisconsin mills. The letter is attached to the sheet.

(Said letter was also marked Ex. 36 and received in evidence.)

The small book that you show me dated February 15, 1923, called "Delivered Cost Chart" is an average cost chart showing the average cost of 13/16 f. o. b. cars at flooring mills, to which is added on the succeeding chart the average cost of freight to destination under the name "Delivered Cost Chart."

(Said book marked Gov. Ex. No. 37 and received in evidence.)

Q. So it is that at the present time every member of the association has in his possession the book which shows first, the estimated cost of production, and, second, your freight rate from Cadillac, which you call the average freight rate to several thousand points in the United States, scattered all over the United States?

A. Yes, that is all he has at the present time, except——

Q. We will see directly about that.

A. He has a freight table showing the cost of freight, but no delivered cost.

Q. Aren't you mistaken on that assertion "that is all he has."

A. That is all he should have.

Q. Don't he have the amount of production and the price of everything, every sale that is made?

A. You are talking about the freight rates, you were talking about the rate book.

Q. You made that as a broad statement, that is all he would have.

A. I should have added, "in his rate book."

[fol. 211] Q. That is all that is shown by this rate book, what you stated a while ago?

A. However, you mean now the last table of the rate book?

Q. That is all that is shown in any of these rate books?

A. Well the table of delivered average cost has been eliminated from the rate book. We sent you correspondence to that effect; we sent it to Mr. Thompson.

Q. Oh, you mean after the suit was started?

A. Yes.

Mr. Darby: You asked him what he had now.

A. You asked me what we had now, and we are in November, 1923.

Q. What does that rate book that you got out after the suit was started, show?

A. It shows the average rate of freight, assuming Cadillac to represent the average, to about seven thousand six hundred different cities and towns in the United States.

Q. Yes.

A. It shows the average cost of 13-16ths maple flooring for cars at the flooring plant; it shows the table of what the actual cost of freight would be on certain rates of freight.

Q. Well what more than that did any of the freight rate books ever show?

A. Well the other freight rate books as you know showed delivered cost, what it cost.

Mr. Darby. It added the two.

A. The two were added.

Q. The only difference is the fellow makes his own addition.

A. He could make his own addition.

Q. Then before that why it was added for him, he just had to glance at it.

A. He might not use the rate of Cadillac.

[fol. 212] Q. He could.

A. He could use the rate from Cadillac, could use the rate from his own mill.

Q. Then hasn't he got exactly the same information in his possession now that he had before, the only difference being he has to make a calculation now, whereas before he did not have to make a calculation?

Mr. Darby: The book is in evidence.

A. Haven't you got the book in evidence?

The Court: Answer the question.

A. I would like to see the rate book to see if they are the same, but I would say generally—

The Court: I take it you know something about the business of this Association and its methods, and possess the means of giving us the information.

A. Well he has practically the same, except of course he had to add one to the other.

The Court: In other words, instead of having a four, he has two and two.

Mr. Darby: Well, that is not the only difference, your Honor.

The Court: That may be.

Mr. Darby: But that is so with respect to the rate.

A. I would like to say that, your Honor, other things have been eliminated from the rate book.

The papers you hand me were all sent out from my office.

(Said papers marked Gov. Ex. No. 38 and 38 A to 38 K inclusive and received in evidence.)

Letters shown me dated February 14th, 1922, April 29th, 1922, October 30th, 1922 and November 23rd, 1922, were sent out by me.

[fol. 213] (Said letters marked Gov. Ex. 39 and 39 A to 39 D inclusive received in evidence.)

(Witness temporarily withdrawn).

GEORGE W. MASON, being first duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I live at Rhinelander, Wisconsin, and am in the lumber business. I do not manufacture maple flooring at the present time nor have I manufactured any since October 1st, 1919. During 1919 I manufactured approximately 2,000,000 feet and about the same amount during 1918. The name of my Company is the Mason-Donaldson Lumber Company. It does not belong to this association.

(Cross-examination by Mr. Johnston:)

My company was a member of the Maple Flooring Manufacturers Association at one time. We withdrew when we quit manufacturing maple flooring in 1919. We were then operating a factory. We were operating a factory that we had under lease and when the lease expired we gave up the factory. We continued in the lumber business and are still producing maple lumber. We do not job or buy from other manufacturers of maple flooring, except a very small part. We do not manufacture any maple flooring. We have bought a very little from other manufacturers and resold it.

(Redirect examination by Mr. Fowler:)

The Robbins Flooring Company of Rhinelander, Wisconsin, own the mill which we formerly had under lease. I think the Robbins Flooring Company produces about 2,000,000 feet of maple flooring a year.

[fol. 214] (Recross-examination by Mr. Johnston:)

I do not think the plant in question could produce more than two and a half million feet. There were two machines. I think

that the most that we ever got out of the two machines was about 8,000 feet per day.

JAMES A. MURDOCK, being first duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I am the manager of the Dwight Lumber Company. To a limited extent we manufacture maple flooring and have done so for about 25 years. My company is not a member of this Association. During the last six years my company has produced about 3,000,000 feet of maple flooring. The amount produced would fluctuate between 175,000 to 400,000 feet per year. During 1922 we produced 411,405 feet of maple and birch. In 1921 we produced 173,000 feet. My estimate for the year 1920 is 175,000 feet. For 1919 my estimate would be 400,000 feet; for 1918, about 250,000 feet. Up to September 1st, 1923, we produced about 85,000 feet.

(Cross-examination by Mr. Johnston:)

At the present time we have three machines. The daily capacity of each machine is about 4,000 feet. We only run the machines occasionally. It would be possible for us to operate them constantly if the demand was large enough or the price was adequate to justify such operation throughout the entire year. We buy rough maple lumber, also make mouldings, interior trim, veneers, etc. Most of our maple flooring is sold in Detroit. We sell our flooring to contractors and come into competition with the retailers or local yards at Detroit.

[fol. 215] GEORGE W. KEEHN resumed the stand for further direct examination by Mr. Fowler.

The document you hand me appears to be a photostatic copy of a part of one of the freight rate books that was used in 1921.

(Document marked Gov. Ex. No. 34-A to 34-P, and received in evidence.)

The documents you show me, dated May 15th, 1916, July 1, 1916, December 15, 1916, etc., appear to have been parts of different rate books.

(Said documents marked Gov. Ex. 31-A to 31-R, and received in evidence.)

The document you hand me is a reprint from the rate book of May 22, 1913.

(Said document marked Gov. Ex. 30-F and received in evidence.)

The documents you hand me look like statistical reports and other data issued by different associations.

(Said documents were marked Gov. Ex. 40, 40-A to 40, 5-R and received in evidence.)

The documents which you hand me appear to be data sent out by different associations from time to time.

(Said documents marked Gov. Ex. 41, 41-A to 41-2Y and Gov. Ex. 42 and 42-A to 42-C, and received in evidence.)

The documents you hand me appear to be weekly reports issued by the association in existence during 1921.

(Said documents marked Gov. Ex. No. 43, 43-A to 43-6N, and received in evidence.)

In regard to these reports, the Association has prepared blank forms for reporting, and it furnishes each one of the members with the necessary forms.

Q. As I understand, each member is required to report to the Secretary every week. Is he?

[fol. 216] A. He is supposed to report to the Secretary, but he isn't required to do so. As a matter of fact, he doesn't report every week—every member doesn't.

Q. Sometimes they will neglect to?

A. Sometimes they do report and sometimes they don't. There is no penalty of any kind for not reporting.

[fol. 217] Q. Suppose he does not report, are you quiet about it?

A. Sometimes we ask him to send in his report so that our statistics may be more complete.

Q. Don't you always ask him?

A. Not invariably. We frequently do, but not always.

I could give more instances when I did not inquire than when I did. There are dozens of times when we never wrote to members for their missing reports. Any way, each member is supposed to make a report each week as provided for in the Articles of Association when he joins the Association. We request the members to send in their reports at the close of business at the end of the week.

Q. Don't they understand without any request to send it in at the end of the week?

A. Sometimes they neglect to do it.

Q. But they understand that they are to send it in at the end of the week?

A. Certainly, it is so provided in the Articles of Association.

Q. You mean at the end of the week, on Saturday?

A. At the end of the week on Saturday. If they send it by the following Monday so that we can get it by Tuesday or Wednesday.

Q. The custom is and the regulation is for them to send it in at the end of the week?

A. It is not a regulation, it is a request that they do so.

It is generally understood that the members will send in their reports at the close of the week. That is, the report of sales made during that particular week?

[fol. 218] Q. I hand you a blank form, state whether or not that is one that is used by the member.

A. That is a monthly report of sales, it is not a weekly report of sales. This says Report of Average Prices Realized.

[fol. 219] The Court: I take it you are talking about the present practices?

A. That is correct, your Honor. The present practices of the Association. This blank form is a sales report for the week ending Saturday, so and so. Then following is a complete report of all sales made by us this week of all kinds of maple, beech and birch flooring. That gives the date, the quantity, the thickness and face, the grade, the wood, delivered price sold at, average freight rate to destination and the rate of commission paid if any. Then we say "Please mail this report every Saturday. If you made no sale during the week please mail this report form with the notation 'No sale.'" That is sent out to the members to be filled out and by them sent to us so that we can compile it and send the tabulations to all the members of the Association.

Q. If they comply with the Articles of Association they send it in?

A. Yes.

Q. Do they send you any other information at the end of the week but that? Is that the only report they make weekly?

A. Yes that is the only report they make weekly. I am speaking of the present Association.

(Blank form marked Government Exhibit 44 and received in evidence.)

A member also makes a monthly report of average prices realized f. o. b. flooring plant after deducting freight for 13/16" x 2 1/4" face, clear No. 1 and factory maple flooring, standard grades and lengths, [fol. 220] sold by us during the month of —. That provides for the number of feet, delivered price sold at, the amount extended, and the freight to destination. Applying to the clear grade, the No. 1 grade and the factory grade, those are added up showing the gross amount, then less freight from our flooring plant to destination so much, then the net amount, then the net per 1,000 feet of each grade, clear, No. 1, and factory. That report is sent in to us by the different members of the Association but all of them don't make the report at all times.

Q. Does that report show each particular sale?

A. No, it just shows—it might show each particular sale or it might be an aggregate of the sales. The report that we send out to the members doesn't show the details.

Each particular sale is reported in the weekly reports and it may not be reported in the monthly report because this report only applies to the standard grades and lengths, while the other product is not reported. This only refers to the 13/16 x 2 1/4" face maple flooring and does not apply to the beech and birch and the other stuff.

Q. Why is it limited to that particular variety?

A. That is the major part of the product. I imagine it represents about 70% of the maple product and the other would be so volu-

minous it would be almost impossible to compile the stuff in a practical way.

(The monthly report Blank form marked Government Exhibit 45 and received in evidence.)

The Court: Do those weekly reports specify not only the dates of sales, the amount, but also the name of the purchaser?

[fol. 221] A. No, not the name of the purchaser nor the destination of the shipment, and at the present time it doesn't give the number of the member who made the sale.

Q. But it shows the amount of freight that was paid?

A. It shows the average freight rate.

Q. Doesn't that weekly report show the freight rate of each particular sale?

A. Each particular sale.

The Court: You say it does not designate the number of the member, but it is signed is it not, so that you know who is making the report?

A. We know who is making the report, but we do not make that detail public in our reports at the present time.

The next report is what we call a "stock report". Stock on hand. That comes from each member of the Association and is compiled and tabulated and bulletined to the members of the Association in the aggregate. This report is made at the end of each month. It is supposed to be received by us along about the 5th or 10th of the month so that we can consolidate it and send out the aggregate totals to the members of the Association, that is, maple flooring on hand at the end of the month in the clear, the No. 1 grade, and the factory grade. Then the 13/16" x 1 1/2", face, 2" face, 2 1/4" face, 3 1/4" face, 1-1/16" all widths, 1-5/16" all widths, 3/8" all widths, 1/2" all widths, 13/16" x 2 1/4" and up, jointed, other kinds, totals. Then below that are the maple unfilled orders on hand covering the same [fol. 222] items in the same manner. The same form is used in regard to beech flooring and the same report is made in regard to birch flooring.

(Blank forms marked Government Exhibits 46, 46-A and 46-B and received in evidence.)

Q. Those reports on production and amounts on hand show exactly the quantity that each member has at the end of the month?

A. To us but not to the other members of the Association.

The report you refer to has nothing whatever to do with production. It shows the stocks on hand and the unfilled orders on hand—not production. We have a separate report for production.

This is a report of production and new orders booked for month of —. That shows production clear, No. 1 and factory, maple, beech and birch flooring and the total. Then below the new orders booked during the month—preceding month. This report is usually made about the 5th of the month following, new orders booked for maple, beech and birch flooring in feet and the total.

(Blank form marked Government Exhibit 47 and received in evidence.)

This blank report form is a report of shipments of maple, beech and birch flooring for month of — showing total quantity shipped of maple, beech and birch, and report is usually made along about the 5th or 10th of the month covering the preceding month's shipments. That report is sent in monthly.

(Blank form marked Government Exhibit 48 and received in evidence.)

Q. Now are those all the reports that are made by the members to the Secretary?

[fol. 223] A. I think those are practically all except once in a while we have the reports during a period of months, you know, as you read from what you call the "forecasts".

Q. You mean that a member will report time to time the forecasts of his business?

A. Not the forecasts of his business, but I think you called it forecasts in talking about it. For example, we have a report from a statistician for the month of October, using that as an illustration. Say we might have a meeting on the 20th of November; then we might ask a member to send his report of how business is running during the month of November regarding shipments, production and new orders, also stock, 13/16" x 2 1/4" clear, No. 1 and factory, which would mean stock on hand, not unfilled orders. Then we would know what business had been done up to the 20th of the month and there is a comparison shown on those sheets there and in the reports of the minutes of meetings which you read. We would estimate what the total volume would be for the month of November, assuming other members' business would run about the same proportion as the others.

We would send that information out to the members in the minutes of the meetings or in a separate letter, probably in the minutes of the meetings.

Q. How often are those forecasts sent out?

A. Generally preceding the meeting, but not generally before the month. It is simply an estimate of what the business indicates the total will be for the month.

Q. Now does that include all the reports that are made by the member to your Association except such talks as he might make to the meeting?

[fol. 224] A. I think that is all we do now except what I said before.

Everything we do now is governed by the Articles of Association. Our reports are clearly defined, we do not go beyond them.

I think we are carrying on a trade association and furnishing statistical information, and that we would have to have all this. I think there are many other things we might ask the members to send us.

Q. When you get that weekly report from all the members—

A. Not all.

Q. Or such that do report——

A. That is right.

Q. What do you do with it?

A. We tabulate it and send the totals to the members of the Association. Sometimes we send it to all the members, Mr. Fowler, and sometimes only to members who make the report. I have one here.

Q. Now, with reference to the members' reports showing the sales and prices, etc., don't you send out to each member a report showing each particular sale?

A. Yes sir. Only on the weekly sales report we do—we list each item as it has been reported to us.

In some cases there are a whole lot of little bit of sales, like 500 or 1,000 feet or 300 feet. We assemble them together and say "so many feet in thirty-seven small sales" without showing the prices at all. It would be too voluminous, you know, it would cover sheet after sheet.

[fol. 225] The Court: Who makes up these reports that you call statistical reports? Yourself or some committee of the Association?

A. We make them up in our office from data furnished us by members of the Association.

The Court: You mean yourself and your office force?

A. Yes, my office force. The members send these reports to us, then we copy them under this weekly sales report and then we transmit a copy to all the members of the Association, but usually we send them only to the ones who made the weekly sales report. Then at the bottom of each weekly sales report we have a summary of what the average prices realized were during that week, which we send to the lumber trade papers, the Department of Commerce, the Bureau of Census and to the Federal Reserve Bank and to anyone else who wants them or requests that we send them.

The Court: That is the summary?

A. That is the summary, yes.

The Court: If I understand you correctly, the members of the Association make these monthly and weekly reports?

A. Yes, sir.

The Court: Which cover sales and production and new orders and orders unfilled, stocks on hand, and matters of that kind?

A. Yes sir.

The Court: From these reports you—when I say you I mean you and your office force—prepare reports which are sent to the members?

[fol. 226] A. Yes sir.

The Court: Which in turn show the stocks on hand and unfilled orders, the production during the period covered by the report?

A. Yes sir.

The Court: And the same matters that are contained in the reports of the members to you, except that they are compiled——

A. Compiled in total——

The Court: And without giving names?

A. Yes.

The Court: Of the concerns?

A. Yes, at the present time.

The Court: Then you have committees. One of the committees is the Committee on Survey of Costs?

A. Yes sir.

The Court: Another is a Committee on Transportation. I don't know that that is the name of the committee dealing with traffic matters.

A. We have a Committee on Grades and we have a Committee on Advertising at the present time. We have no traffic committee, but we have a Committee on Canadian Flooring Tariff.

The Court: Your freight rates are compiled into a book and that is distributed?

A. Yes sir.

The Court: And that compilation is in a way a permanent compilation, isn't it, unless there may be changes in the rates of freight? [fol. 227] A. It is made from time to time by Casey & Leonard, Inc., Traffic Service people at Chicago. They make it for the Association from freight tariffs.

The Court: Very well, but you do have a Committee that you call Survey of Costs.

A. Yes, Committee on Costs Survey. They have nothing to do with these reports.

The Court: That means cost of production?

A. As explained yesterday the cost of rough maple lumber on the open market from whatever source we can obtain the information. Then we collect from members of the Association data regarding manufacturing and marketing costs each quarter.

The Court: Yes.

A. But these statistics—

The Court: What I am getting at is what your plan is at the present time, and as I understand it that fairly outlines it, is that correct?

A. Yes. These statistics are not in the control of any Committee, are not analyzed by any Committee; simply sent in by the members and tabulated and the total sent out to the members of the Association. I am speaking now of the monthly report.

Now the weekly reports are weekly reports of sales that give the date sold, quantity and description, delivered price sold at, the average freight rate and the commission paid, if any. Then if there are a great lot of small sales, say for example, 31,000 feet in forty-one small sales, it would be very foolish to list all those. Down [fol. 228] at the bottom is: Average of sales week ending November 3, 1923; average delivered prices 13/16" x 2 1/4" face, clear, No. 1 and factory, maple flooring, standard grades and lengths and average or average freight at destination, and average cost of freight and average of prices realized, then f. o. b. flooring mill basis; then we give our manufacturing trade papers the final figures, the average of the week ending such a date, of clear, No. 1 and factory of maple flooring.

The Court: Then every member of this Association at stated times has a report showing the sales that are made by the members of the Association, showing the prices realized upon the sales, showing the freight rate, showing the net price of every sale of any magnitude that is made by any member of the Association?

A. That comes out in the monthly sales report or the monthly report of average prices realized for all the sales of a member less the freight.

The Court: Perhaps I misunderstood you, but I understand you make weekly reports?

A. Yes, we make weekly reports of sales and those weekly reports show the sales——

The Court: Show the sales——

A. And the prices——

The Court: Realized?

A. Yes.

The Court: The freight paid?

A. The average freight rate.

The Court: It gives all the data that any member needs to have in order to ascertain exactly what price has been paid upon any particular sale, not the name of the member of the Association who made the sale, but upon any particular sale that is of any magnitude?

A. Yes.

The Court: And then in the monthly reports you summarize that?

A. We give the averages.

The Court: Or give the averages, now isn't that it?

A. It does not show the destination of the shipments or the territory in which the flooring is sold.

Q. No, but it does give the freight?

A. It gives the average freight rate?

[fol. 230] The paper you hand me designated "Maple Flooring Manufacturers Association Record of Completed Transactions; Report of sales made during the week ended July 21, 1923," is a report that was sent out by the Association.

(Said document marked Gov. Ex. 49 and received in evidence.)

That is the report we are sending out at the present time. It hasn't the numbers of the different members on it. Since this lawsuit was begun we have omitted putting the number of the member on the report. We were using the numbers before.

[fol. 231] Is that the only difference between the report now and before the beginning of the lawsuit?

A. Well the summary at the bottom might have been added since then. No, I think not. I think it is practically the same.

Q. But that does show every sale that was made by every member of the association.

A. Who makes the report.

Q. I know, showing the quantity and the character of the lumber.

A. Yes.

Q. And the price of the lumber and the average freight rate on the sale and the commission paid.

A. Yes, sir.

Q. Now is there a monthly report that is made by you to the members?

A. Yes, sir.

Q. How many monthly reports are there? Just one?

A. There is quite a number of them.

Q. I wish you would explain first was there a monthly report relating to the price, showing the sales and price realized?

A. Would it be all right if I gave them in order, taking them down for September, 1923, as an example?

A. That will be all right.

[fol. 232] Taking the report of September, 1923, for example, this is what we call a Barometer Sheet. Stock conditions and Barometer for September, 1923; stock condition and per cent sold of maple, beech and birch, Clear, No. 1, factory, all three; on September 1st, 1923, September 30, 1923, and September 30, 1922, compared; then maple, the same comparison; then maple 2¼ inch face, the same comparison, on account of its being such a large proportion of the maple flooring product. Then down below these are the percentages; in the table above it shows the per cent sold and stocks on hand. Then that is compared with a month ago and compared with a year ago, of maple, beech and birch and maple, 2¼ face with points up and points down, showing the trend down of supply and demand, and orders. Down below we have what we call a M. F. M. A. Barometer for September 1923, and in that Barometer the report in total of the same 21 members for the month this year and the month a year ago which are compared and references to these fundamental conditions in the industry. Stocks on hand September 30, 1923, compared with stocks on hand September 30, 1922, in total. Then the decrease or increase as the case may be, and then a percentage of decrease or increase as the case may be.

Then we have the unfilled orders of September 30, 1923, compared with the unfilled orders of September 30, 1922, in thousands [fol. 233] of feet totaled, the decrease or increase as the case may be in feet and also in percentages; then the shipments for September 1923 in totals or thousands of feet, and shipments for September 1922, and the decrease or increase as the case may be in feet and in percentages.

Production the same way, and new orders booked the same way. Then we have the average values of 13-16 x 2¼ face Clear, No. and factory maple flooring, f. o. b. Michigan and Wisconsin mills, which is computed on a weighted average, the clear being figured as 50 per cent, No. 1 35 per cent and factory as 15 per cent. That shows the average for September, 1923 in this case and for September, 1922; then the increase or decrease as the case may be. Then these are charted in the form of a barometer or shaft. We take September 22, as a measure and in this particular one before me this shaft

indicates that September, 1922 is $3\frac{1}{8}$ inches tall or 50-16ths inches, so consequently every sixteenth of an inch represents two per cent.

Now if we come in the first column, for example, September 1922, of stocks on hand, 23,417,000 feet, and at 56 feet—pardon me, that is represented by 50-16ths of an inch, now the September stocks on hand show a decrease of 15 per cent, and that would equal about 85 per cent, so this shaft here would be about 42-16ths, showing the relative thing, and all the way through the same thing occurs. September, 1923 was taken as a measure in all cases, representing 100 per cent, then the heights of these different shafts, each 16th representing two per cent.

[fol. 234] "Q. And the last shaft is average values?"

A. Average values, yes, that show an increase of 4.6 per cent, showing it was a very trifle higher than the September 1922 measure.

Q. Now that is sent out at the end of the month?

A. Sent out usually the middle of the following month. In this particular case sent out October 20, 1923.

Q. Dealing with the transactions of the previous month?

A. During the previous month.

Q. Do you send out to the members any other information?

A. Yes, on the next sheet we have maple, beech and birch flooring statistics in M feet, September 1923, 1922, compared. Stocks on hand September 30, 1923, and 1922; unfilled orders the same, shipments for the months of September; production for the months of September; new orders for the month of September, and stock changes in September 1923 and in 1922.

Those statistics are arranged at the present time in geographical groups, so that no member of the association may know which other member has the stock on hand or how much he shipped or what his production was or what his new orders were. The aggregate of the stocks on hand of Eastern and Lower Michigan members, there are four members in Eastern Lower Michigan, shows 4,236,000 as illustrated, this year, 4,882,000 last year; unfilled orders, 5,298,000 this year; 6,062,000 last year; shipments 2,613 this year, 3,215 last year; production 2,875 this year, 3,244 last year; and new orders, 1,457 this year, September, and 3,315 last year and so on; showing that stocks on hand decreased 16,000 this month, or I should say [fol. 235] September, 1923, and 491,000 in 1922. The same method is used for the Western and lower Michigan mills in which there are six members located. Upper Michigan mills, in which there are four members located, and Wisconsin mills, in which there are four members located. Then Group 5 we call Chicago, St. Paul and Tupper Lake mills, three of them, that shows their total, and it is all added up, the 21 mills for example, 19,794,000 stocks on hand September, 1923; 23,417,000 a year ago, a decrease of 3,623,000, or $15\frac{1}{2}$ per cent. The unfilled orders shows a total of 17,671,000 one year ago, 21,467,000—pardon me, 17,671 September 30, of this year, 21,467,000 a year ago, a decrease of 3,796,000 or 17.7 per cent; the shipments this September 9,933, last September, 12,301,000, a decrease of 2,368,000 or 19 per cent; the production 10,422,000

this year, 11,957,000 last September, a decrease of 1,575,000 or 12.8 per cent; new orders, September, this year, 8,603,000, last year, 11,404,000, decrease of 2,800,000, or 24.6 per cent; then the stock changes are carried down showing the net result as 242,000 increase as against 466,000 decrease a year ago. Then that is compared with the previous month at the bottom. September, 1923, is compared with August, 1923, showing the increase or decrease as the case may be.

Q. Now this was sent out,—you also sent out a report of Range of Average Prices Realized, do you not?

A. Yes, sir.

Q. Just explain what that shows without going into detail.

A. All right.

[fol. 236] Q. We don't care about the figures.

A. The range of average prices realized, that is f. o. b. Michigan and Wisconsin flooring mills for a given month, September in this particular case, for new orders booked during that month for 13-16 x 2¼ Clear, No. 1 and Factory Maple Flooring, Standard Grades and Lengths, after deducting freight.

Q. That is divided into the same groups?

A. Yes, into the same groups and shows the range of prices from the high to the low, or from the low to the high I should say, Clear, No. 1 and Factory.

Q. Now before I overlook it, how many members of the Association do business or are located in Michigan?

A. Pardon me, I will find that. In Eastern Lower Michigan, four mills; in Western Lower Michigan, 6 mills; in Upper Michigan there are four mills so that makes fourteen of them that do business in Michigan.

Q. Are there mills in Wisconsin?

A. Four of them in Wisconsin, and three of them in Chicago, St. Paul and Tupper Lake, New York, making 21 at the present time.

Q. Do you not send out other reports?

A. Are you through with this exhibit?

Q. What is that?

A. I might say that this range of average prices realized does not include reports of Chicago, St. Paul and Tupper Lake, because to put their statistics in you would identify the members making those sales. There is no identification here of any member, so we couldn't [fol. 237] put the other people in a group, because we would have to say Tupper Lake and having only one member there we would disclose his identity.

Q. So you just leave him out?

A. We just leave him out.

Q. But he gets all the information about the other fellows?

A. He gets those sheets of paper; each member of the Association is informed about the trend of the market.

Q. Now explain about the remaining reports that you send out to various members.

A. Here is a report which we call Miscellaneous. Reports, using September 1923 as an illustration. We show shipments in Septem-

ber, 1923, maple, beech, birch and the total by 21 mills; similar data for 1922, same 21 mills, then we show the decrease or increase as the case may be in thousands of feet and also our percentages; then we show the production by grades.

Q. Same woods.

A. Maple, beech and birch, Clear, No. 1 and factory; then all three together, for example the production in September 1923 was 43 per cent clear, 35 per cent No. 1 and 22 per cent factory on the maple flooring; in the year 1922 it was 46 per cent, 37 per cent and 17 per cent; then we have a seven year average as a matter of comparison, showing 47, 35 and 18 respectively. Then below that are the average prices realized f. o. b. Michigan and Wisconsin mills, for 13-16 x 2¼ face maple flooring, September 1913, 1923, 1922 and 1920 compared, using Clear as 50 per cent, No. 1, 35, and factory 15 per cent, and making up the average of the production, weighted [fol. 238] average, according to the estimated production, then we use September 1913 as 100 per cent as the base, which is the year the Government uses in compiling its statistics. In the year 1913 we find that—

Q. I don't care what you find; it will show.

A. Yes, it will show.

Q. It will show for itself.

A. Yes. It also shows a peak year index number and different Septembers on an index number. That is that.

Now the next report is a consolidation of the stocks on hand and unfilled orders on hand of maple, beech and birch flooring on September 30, 1923, as an illustration, and that is a complete tabulation of the reports that are sent to us by the different members of the Association, and gives the quantities in the aggregate but no individual figures respecting the items in the hands of any members of the Association. That shows the totals of Clear and the total of No. 1 and the total factory, you know, all added up and the per cent sold; then down below the maple, beech and birch unfilled orders are given, one set underneath the other for convenience and comparison. That shows the relation of supply and demand for the different items.

The next report of the maple flooring, ending September 30, 1923, which is similar to the other, no use going into that. This individual item is of maple flooring, however, because that represents about ninety per cent of the production, and the percentages sold of clear, No. 1 and factory and in all three grades, set forth; also the percentages sold of each of 13-16 x 2 inch; 13-16 x 2¼ inch; separately, and 1 inch x 1-16th separately, and the quantities are in thousands of feet, but cost relations are expressed in percentages. [fol. 239] For example the factory here on September 30, 544,000 feet on hand, 2,059,000 feet sold, making the proportion sold as we call it of 37.8 per cent. Now that carries through all the way through in reference to those items and shows our total stocks on hand of maple flooring were practically 16,000,000 and unfilled orders 16½ million.

Now we come to the next, Maple Flooring Surplus stocks September 30, 1923, how many surplus stocks there are at the different

mills, how they are classified, but not as individual mills, simply as to the geographical location of these surplus stocks. That would be useful to any member of the Association if he wished to purchase any flooring from any member, he could find out where it was located by correspondence to our members in that particular group, so that there is an exchange of business among the members.

In this statement there are no items listed in surplus stock unless the stock on hand exceeds the unfilled orders by about 100,000 feet; we assume a member should carry certain stock on hand anyway, would naturally carry a surplus stock, and we do not call it a surplus unless he has stock on hand of at least 100,000 feet in excess of his unfilled orders.

Then at the bottom there we show how many surpluses there are in comparison with a year ago.

Now the next page is a report of beech flooring on hand, birch flooring on hand, similar to the maple flooring on hand, with the exception that the percentages sold are not gone through with any detail, simply gives the totals on the right hand side of each column. The percentages of Clear, No. 1 and factory of beech, separately, and of birch, separately, but not as individual items.

Then the last sheet is a record of receipt of September 1923 re- [fol. 240] ports, maple, beech and birch flooring. That is simply a copy of the tabulation in our office as to when the reports are received. For instance, some report very early in the month, and some report very late in the month, but there is no penalty for failing to report, being tardy or late or anything else.

Q. And those that you have mentioned compose the full set of reports that you send out monthly?

A. Yes, sir; yes, monthly, at the present time."

Mr. Fowler: The Government will file this as Exhibit 50.

(Document referred to marked Government Exhibit 50 and received in evidence.)

"Q. Now have we covered the entire reporting system of the members to the association and the association back to the members?

A. I think we have, yes, at the present time."

[fol. 241] Q. Now Mr. Kechn, going on to another matter, you held meetings?

A. Yes.

Q. How often were those meetings held?

A. During the past year I think they were held about monthly, there may have been months they were not held. In former years they were held quarterly and semi-annually and annually.

Q. When did you begin holding those meetings monthly?

A. I would say from memory some time late in 1921 or during the year 1922.

Q. Well, it was after the hardwood decision in the Court below?

A. After the hardwood decision?

Q. In the Court below

A. As I said the other day, we suspended our statistics in April

1920, then afterwards when the hardwood decision was rendered in the Supreme Court, I think it was December, 1921, then we got the opinion from our Attorney, in regard to the statistics——

Q. I am not asking that.

A. Pardon me, this leads up to it; and we held meetings.

Q. It is a circuitous track. Any way, those meetings began to be held monthly after the decision in the Hardwood Lumber Company case.

A. Not in every case monthly, but I would say in a general way monthly.

Q. Before that they had been held quarterly?

A. There were sometimes special meetings, and semi-annual meetings and annual meetings.

The Court: Haven't you the records here that show the proceedings of these meetings?

A. We have many of them, but not any of the old ones.

Q. Did you keep minutes of all the meetings?

A. We kept minutes of all meetings but didn't keep all minutes of all meetings.

[fol. 242] Q. What did you do with the minutes that you haven't got?

A. That we have got or haven't got?

Q. Haven't got?

A. They go back for a long period of time, and we don't keep all those things.

Q. Have you got all minutes for the last two years?

A. I think probably we have.

[fol. 243] The Court: It does not make the slightest difference; it would seem that we might have these things so it would avoid labor. If you have the record book here you can tell within five minutes; it won't take you much more than a minute.

Mr. Darby: We have no record book; they are kept on these sheets. The Government has already introduced them in evidence, and they are here and marked. I can give your Honor the Exhibit number; they put the entire year 1922 in.

A. You have all the year 1922, I don't know of any that are missing in 1922.

The Court: Gentlemen, there is a way to confuse this matter, in this case, and there is a way to clarify it, and it is a simple way.

Mr. Johnston: It does not seem to me, your Honor, where the Government has already introduced the minutes for this year, and they have the statistics in, that we need to do anything further.

The Court: This man knows better than any other man in the world as to what conditions existed, and can tell us without our having to spend weeks, likely enough, to dig it up from this great mass of testimony. It can be summarized and he can tell us, as I say, within five minutes; you say sometimes you held monthly meetings, sometimes you did not. I want to know how many meetings you

held in 1922, and what the dates of them were, and if you have the record here you can tell us in five minutes.

Mr. Darby (to witness): Here are the exhibits.

A. Those are the old ones, those aren't '22.

A. Here are the minutes of meetings we have given to the Department of Justice, those were given to Mr. Frank.

[fol. 244] The first meeting in 1922 was held January 12th. Other meetings were held during that year on February 25th, March 9th, March 29th, April 20th, May 17th, June 21st, July 19th, August 16th, October 24th, November 15th and December 19th.

We held meetings subsequent to that and are holding them now.

We had no stenographer present at the meetings and didn't undertake to take down just what was said and done.

Q. You just made a memorandum of some things?

A. Made a memorandum of all things that were talked about in these meetings and wrote them up afterwards.

Q. Do you mean to swear that your minutes of those meetings show everything that was talked about?

A. By the Association as an Association meeting, with the exception of the details of the defense of this suit. That was not written out.

Q. Well, I believe you swore the other day that you didn't have, or didn't record the action of the meeting with reference to a discontinuing of that allotment?

A. No we didn't record that. That was in 1920.

Q. If you omitted that why were you so particular about putting other matters that were of very little importance—

A. We have been very particular in our meetings since the decision in the Memphis case and in the American Linseed Oil Case to follow the advice of our attorneys in discussing things at the meetings and we put in our minutes of the meetings just what was [fol. 245] transacted in the meeting. I am speaking now of 1922—I am not speaking of the old days.

Q. In those meetings what did you discuss?

A. Well, discussed trade conditions generally, as reflected by statistical information; they discussed the market prices of rough maple flooring or lumber; they discussed manufacturing and market conditions; they sometimes discussed labor conditions; they would devote a large amount of time to discussing the advertising campaign which the Association has had under way during the last year and a half or two years; spent considerable time on Grade Committee work, also on the petition presented to President Harding when he was alive about doing something on the duty on Canadian flooring; all those things were fully outlined in the minutes of the meeting.

Q. Did you ever discuss the price of maple flooring?

A. We do not discuss the price of maple flooring at the present time.

Q. Never mention it?

Mr. Darby: What do you mean, future prices or past prices?

Mr. Fowler: I am examining the witness, not you.

A. We do not discuss the future prices to be charged. There is no reason to discuss past prices because they are contained in the weekly sales report which the members have before they come to the meetings.

Q. You never mention the prices of flooring at all?

A. Not as an Association discussion.

[fol. 246] Q. What about the individuals that stand around?

A. I don't know what they talk about. They may talk about a hundred different things. I am speaking about the Association discussions—what the Association discusses.

Q. That is when they assemble around there and do not get up publicly to make speeches to each other?

A. They do not talk about the price of flooring they are going to charge.

Q. In those speeches?

A. Or in any speeches. As to what they are talking about among themselves I am not in a position to know that.

Q. You don't keep a record of what they talk about among themselves?

A. Those are personal conversations. Why shouldn't a man talk about anything he chooses to?

They met every month and discussed the particular matters outlined in our minutes of the meetings. They were written up in the minutes of the meetings. They usually meet at the Congress Hotel. Sometimes about 11 o'clock and staying in session until about 12:30 or 1 o'clock, then have lunch and get together again about half past 1 or 2 o'clock and many of them go to the ball game, and that is the end of the meeting. It usually breaks up about three o'clock.

Q. Don't go to ball games in January.

A. Our sessions in the summer.

Q. Usually have a good lunch?

A. Always have a good lunch and have difficulty in holding them together after 2 o'clock and a very large amount of time is spent [fol. 247] in discussing advertising programs. We are spending a large amount of money for advertising now and our minutes are full of it.

Q. And you get together once a month to talk about advertising?

A. Well, I have mentioned other things besides advertising.

Q. You take lunch with them?

A. Yes.

Q. Do you keep a record of what is said and done there?

A. No. Sometimes they talk about what theatre to go to in the evening. It is a social affair.

Q. Don't talk about what—

A. I couldn't state what is said at lunch; I sit at one end of the table and they sit at the other.

[fol. 248] (A mass of miscellaneous documents, marked Government's Exhibits 51, 51-A to 51-WW, and received in evidence.)

The documents you hand me were either sent out by me or were received by me.

(Said documents marked Gov. Ex. 52, 52A to 52 GGG and received in evidence.)

The sheet of January 22, 1916, shows the numbers of the members of the association then in existence. The numbers have not been changed since. The statement of May 25, 1922, gives the membership numbers of the members of the defendant association, with a notation on it that the Wisconsin Land & Lumber Company never signed the Articles of Association and were uncertain as to whether or not they would join, also a further notation that as a matter of fact all the signatures to the new Articles of Association were given upon condition that all the members of the old association, including the Wisconsin Land & Lumber Company, would join the new association. That however was waived.

(Paper referred to was marked Gov. Ex. 53 and 53A and received in evidence.)

The chart you hand me designated "Production of Maple and Oak flooring, monthly average 1919 to 1922," was prepared by the William H. Rankin Company, our advertising agents. I do not know the source of their information. They got it up in order to encourage us to extend our advertising campaign and for the purpose of showing that the oak flooring people were getting our business away from us. The William H. Rankin Company are well known advertising agents and they place all our advertisements. We never give the William H. Rankin Company any data for the preparation of said chart. They may have got the data from the Survey of Current Business, issued by the Department of Commerce and the Bureau [fol. 249] of Census. We sent copies of this chart to members of the association to get them to proceed with the advertising campaign. It was an argument of William H. Rankin—not an argument of the association.

(Said chart, marked Gov. Ex. Extra 54, received in evidence.)

An examination of the Survey of Current Business issued by the Department of Commerce for the month of August, 1922 leads me to believe that the William H. Rankin Company got the data for the chart above mentioned from the said above source. The Department of Commerce got its data from us.

The flooring manufactured by the members of the association is shipped by them into practically all the states of the United States. [fol. 250] Some of the flooring is also exported. All the different members are engaged in interstate commerce.

(Witness temporarily withdrawn.)

THOMAS FOREMAN, being first duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I am connected with the Thomas Foreman Company of Detroit, which is in the lumber business. The factory is located at Detroit. At times we manufacture maple flooring and have been manufacturing it more or less since 1912. We do not keep a record of the amount of flooring manufactured. I have here the amount that has been credited to the manufacture of maple flooring in dollars and cents for different years. I have not the amount in feet. In 1918 the maple flooring account was credited with \$97,196; in 1919, \$69,703; in 1920, \$264,890; in 1921, \$209,031; in 1922, \$132,231. I should think that the prices may have averaged during those periods \$80 to \$90 a thousand, and according to my best judgment, in 1918 we manufactured about 900,000 feet; in 1919, 50,000 feet; in 1920 about 2,000,000 feet; in 1921, 1,700,000 feet; in 1922, 1,200,000 feet. These are only rough approximations, you understand. We have been manufacturing in 1923 about as we did in 1922. We don't belong to the defendant association. I think that it was in 1918 or 1919 that we ceased to be members of the Maple Flooring Manufacturers Association.

[fol. 251] Cross-examination by Mr. Darby:)

We have in our plant at Detroit three fast-feed machines with a daily capacity of about 35,000 feet or about 9,000,000 feet annually. I have been in the flooring business since 1890. We do not produce maple flooring continuously, we produce oak flooring as well. The fluctuations in the amount of maple flooring produced are due to the possibility of profit. When there is more money in oak flooring we produce oak. When we can make more money on maple flooring we produce it. We keep close track of our cost at all times and we shift from one flooring to the other. Both oak flooring and maple flooring are made on the same machines. We have occasion to purchase maple flooring and we do so when we can make more money by buying it than we can by manufacturing it. We purchase from any of the manufacturers in Michigan, but largely from Kerry & Hanson Flooring Company at Grayling. We dispose of most of our flooring in Detroit in less than carload lots. Competition in the sale of flooring exists in Detroit.

[fol. 252] Q. You were once a member of an Association called the Maple Flooring Manufacturers Association?

A. Yes, sir.

Q. How long were you a member of an Association by that name?

A. From the time of its formation until we retired in 1918 or 1919, I have forgotten just which.

Q. When was it formed or when did you first become connected with it, in what year?

A. I think it was 1898.

Q. And you continued to be a member of various Associations that succeeded the first one up until 1918 and 1919?

A. Yes, sir.

Q. I wish you would tell the Court just what happened while you were a member of those different Associations, if there was any uniform or fixed price or if you made any efforts at that time to establish the price, why state it, give the Court your entire knowledge along those different subjects.

A. Why, early in the history of it we attempted to fix price but it was a dead failure.

Q. Why?

A. We couldn't hold together, all the time somebody breaking the price, we got disgusted with it.

Q. What did you do under those circumstances?

A. Just ignore it and sell our stuff the best we could.

Q. How long did those conditions continue?

A. Not very long on that fixed price, I think not more than a year, perhaps a year and a half.

Q. What year was that, please?

A. Oh, I would say along perhaps 1903 or 4, way back, an early date.

Q. You were a member of some Association when there was a Minimum Price Plan agreement?

A. Yes, sir.

Q. State what happened during that time, that was in 1916 or [fol. 253] 1917, 1918, or 1919?

A. Perhaps, yes, I think so.

Q. State what the conditions were at that time with respect to uniformity of prices.

A. About similar to the fixed price, this was a recommendation as to the price we should obtain under market conditions as to supply and demand but we were never controlled in any way at all, we all went and sold our stuff as we were amind to.

Q. State whether you were during those years constantly selling flooring yourself.

A. Manufacturing and selling, yes, sir.

Q. Did you find that there was any uniform price at that time?

A. Only to a certain extent.

Q. You received reports from the Association at that time, the Secretary of the Association?

A. Yes, sir.

Q. Those reports, state whether or not they show a variation in prices or one price or uniformity or substantial uniformity.

A. No, showed a variation.

Q. Was any demand ever made on you for any fines or penalties for your refusing to sell at any price?

A. Never at all.

Q. Do you know that any demands were made on any one else?

A. I think not.

Q. By the Association?

A. I never heard of it.

Examination by Mr. Fowler:

Q. Did you say that you belong to the Association that agreed on fixed prices?

A. Way back, we undertook to agree on a fixed price, yes.

Q. You did really agree?

A. Yes, sir.

[fol. 254] Q. But some of them would jump the agreement?

A. Yes, sir.

Q. How did you find that out?

A. Because we would get it through our customers that they could buy cheaper from our competitor.

Q. Back in that day and time you had no way to check up on a fellow except through your customer?

A. Not that I remember of.

Q. You had no reporting system?

A. No, sir, not that I remember of.

Q. Were not required to report weekly all the sales he had made and the prices he had gotten, anything like that, back there, back there?

A. Not that I remember at that time.

Q. Just sat down and just agreed we will all sell at a certain price?

A. Yes, sir.

Q. But they wouldn't keep the agreement?

A. That is right, sir.

Q. Did you belong to them when they began to ask you to report and let them know what you were doing?

A. Yes, sir.

Q. You did report for a time?

A. Yes, sir.

Q. After that you agreed on this Minimum Price Plan, did you?

A. I don't remember any agreement on that. It was put into effect as a good business policy.

Q. That was agreed under the Articles of Association, wasn't it?

A. Whatever that record shows would cover that.

Q. Were you familiar with the Articles of Association?

A. Yes, sir, always.

Q. It provided that there was going to be a penalty imposed on you if you didn't—anyway it shows what it was, you did work under that for some time, didn't you?

[fol. 255] A. Why yes, as a business proposition, yes.

Q. Three or four years to your own knowledge, didn't you?

A. Yes, sir, I think so.

Q. I believe you left before the Minimum Price Basis went into effect?

A. Yes, sir.

Q. You have not belonged to them since?

A. No, sir.

[fol. 256] (Recross-examination by Mr. Darby:)

I am familiar with the grading rules of the Maple Flooring Manufacturers Association. We manufacture our flooring strictly according to those rules. They are standard and we could not sell flooring if we didn't. Architects specify flooring to be made under those rules. Standardization of maple flooring has been of great benefit to the public as well as to the yard men and wholesalers. It gives them something to stand on. The quality of flooring is tested by reference to those rules. It is a benefit to the dealer because he can carry the product through three or four different mills or a dozen different mills and all of the different floorings can be used on the same job. That condition did not exist in early days. My flooring will match up now with the flooring of other manufacturers. That is because I was formerly a member of the association and have continued to manufacture my flooring in the same way.

[fol. 257] Examination by Mr. Fowler:

Q. You give a number of advantages from this standardization. I will state this—if there had never been anything more of this than mere standardization there would have been no law suit, we are not criticizing this standardization.

Mr. Johnston: In the petition you do criticise it.

Mr. Fowler: I am going to criticise it right now just incidentally. In addition to those benefits you have been telling about, it has one other benefit and that it is an easy matter for each member in examining those reports to determine at once how much every other member is getting for his lumber, doesn't it?

A. I don't know as I quite get the idea, sir.

Q. Before you quit the Association, every week the Secretary was sending to you a statement, a report showing what sales had been made by every other member, wasn't he—didn't you get those reports?

A. I don't remember that there was specific sales made by other members. The whole has been reported, the total sales.

[fol. 258] Since I quit the association I have had no correspondence with the members, except when I wanted to buy flooring. We have had no connection whatever with the association or the individual members.

FRANK A. BELL, being duly sworn, testified as follows:

I am Secretary of the Consolidated Fuel & Lumber Company which for a few years prior to about the middle of 1913 manufactured maple flooring. It has manufactured no maple flooring since then.

R. F. HOOKER, being sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I live at Grand Rapids and am in the retail lumber business. We do not manufacture maple flooring and never manufactured any.

(Cross-examination by Mr. Darby:)

We buy maple flooring from various manufacturers. We have bought from Nichols & Cox, J. W. Wells Lumber Company, Mitchell Bros., Cobbs & Mitchell, Wisconsin Land & Lumber Company, Kerry & Hanson Company, Cummer-Diggins Company, Bigelow [fol. 259] Cooper Company, West Michigan Flooring Company. In buying flooring we send out inquiries to several different manufacturers. We buy less than half a million feet a year in both carload and less than carload lots. We address inquiries to several different manufacturers in order that we may buy to best advantage. There is always a variation in the quotations made by different manufacturers on one inquiry. I don't recall that I ever found all of them quoting the same price. At all times there has been a variation between prices quoted on the same inquiry by the different manufacturers above mentioned. This variation fluctuates. We buy other lumber products as well as maple flooring. At times the variation in prices of maple flooring was as large as the variation in prices of oak flooring or other lumber products. We have bought flooring from Horner of Reed City and Ward Bros. of Big Rapids. Sometimes the prices of Ward Bros., as compared with the prices of the other manufacturers above mentioned, were lower and sometimes higher. I believe the standardization of maple flooring is a good thing. We know exactly what we are going to get when we send out an inquiry and place an order. It is our policy to discount our bills as soon as the cars are unloaded and found satisfactory. We get a cash discount of 2%. We never have had any trouble in getting flooring on these terms.

Stipulation by defendants that the W. E. Williams Company of Traverse City, Michigan, is no longer in business and does not now manufacture any maple flooring.

Stipulation by the plaintiff and the defendants that statements received from the Robbins Flooring Company by plaintiff and by [fol. 260] defendants may be introduced in evidence. A statement of by said company, addressed to the Government, shows that the Robbins Flooring Company was not operating in 1918. In 1919 it manufactured 623,216 feet; in 1920, 2,798,956 feet; in 1921, 2,749,001 feet; in 1922, 5,540,200 feet; and that said company does not manufacture beech and but very little birch, which is included in the above figures along with the maple, and that in the opinion of said company a good average basis is 35,000 per month or 4,200,000 a year.

(The statement in question was marked Gov. Ex. 54 and received in evidence.)

Stipulation by defendants that Henry Stevens of Waters, Michigan, has been out of business for 10 years and no longer manufactures maple flooring.

Stipulation by plaintiff and defendants that the affidavit of W. E. Curtis might be introduced in evidence and that letters received by the plaintiff and the defendants from manufacturers, with respect to capacity and production, might also be received in evidence.

Mr. Fowler: Mr. Curtis says that he is president of the Curtis and Yale Company and for a considerable time has been connected with said Company, which is an Iowa Corporation engaged in the manufacture of doors, windows and interior finish at Wausau, Wisconsin.

That for some few years prior to the year 1913 a separate plant in Wausau, Wisconsin, was owned and operated by said company in which hardwood flooring was manufactured.

That on or about the first of the year 1913 the manufacture of [fol. 261] hardwood flooring was discontinued in said plant, and after lying idle for a number of months, that entire plant and its equipment was sold, and the plant has since been owned and operated by other parties in an entirely different line of manufacture.

Further that since the sale of said separate stock, flooring plant, the manufacture of hardwood flooring in quantities has not been undertaken at any of its several plants, and such sales of hardwood flooring as have been made by said Company in its distributing business have been filled with stock purchased largely from a hardwood flooring producer whose plant is located at Gladstone, Michigan.

Further, and finally, that on November 1, 1923, in answer to an inquiry from the Federal Department of Justice, dated October 29, 1923, a statement was made to the effect that no stock hardwood flooring was made by said company in any of the years 1918 to 1922 inclusive, and that such manufacture had been discontinued several years prior to 1918, and said unofficial statement made at that time is now confirmed and included in this affidavit. Signed W. E. Curtis.

(Said affidavit was marked Gov. Ex. 55 and received in evidence.)

The report entitled "Department of Commerce and Labor, Bureau of the Census, Forest Products, etc., "marked Gov. Ex. 56, and other Governmental publications marked respectively Gov. Ex. 56-A, 56-B, 56-C 56-D, 56-E 56-F, 56-G, 56-H and received in evidence.

The depositions of Hr. Franklin H. Smith and W. D. Brush were introduced and read in evidence. (See pages 129 and 137, *infra*.)

[fol. 262] C. W. HUGHES, being first duly sworn, testified as follows:

(Direct examination by Mr. Fowler:)

I am a special agent of the Bureau of Investigation of the Department of Justice and have been in the said department since

March 7, 1918. I have been connected with the investigation of the Maple Flooring Manufacturers Association and have been working on this case since August. I have prepared a statement based upon Government publications and statistics of the Maple Flooring Manufacturers Association.

(Said statement was marked Gov. Ex. 57 and 57-A and received in evidence.)

GEORGE W. KEEHN resumed the stand.

(Cross-examination by Mr. Johnston:)

Government Ex. No. 1 was submitted to the Department of Justice. They were the Articles of Association of 1913. The Articles of Association of 1913, were followed by Articles of Association bearing date 1916, (Gov. Ex. No. 2) and are substantially the same as Gov. Ex. No. 1, with the exception of certain modifications about which I have previously testified. The association operated under the articles of 1913 up to December 31, 1915. A new association was formed beginning January 1, 1916 with in some respects a different membership. The new association then proceeded to operate under the articles which have been introduced as Gov. Ex. No. 2, and continued thereunder until January 1st, 1919, when a new association was formed, the articles of which were dated January 1st, 1919, and have been introduced in evidence as Gov. Ex. No. 3. [fol. 253] During the life of these three associations, which have been referred to and identified by these separate articles of association, there was an allotment plan put into operation. It was in actual operation from January 1, 1913 to December 31, 1915, under the first association. Then it was extended into a new association January 1, 1916 and ran to January 1, 1919. Then it was extended under different groups of members in each particular case or period from January 1, 1919 to July 1, 1919, then a new association was formed. That extension from January 1, 1919 to July 1, 1919 was under the articles of association dated January 1, 1919, which have been offered in evidence as government exhibit 3. [fol. 264] The articles providing for the organization of an association beginning with July 1st, 1919, and extending to July 1st, 1922, provided for an allotment plan, but that association was terminated as of December 31, 1921. Those articles have been introduced as Gov. Ex. No. 4. Certain features of those articles were terminated on March 31, 1920. These features were terminated because of the decision in the lower court regarding the Memphis case, and upon the advice of our attorney we suspended all our statistical work in April or May, 1920, for a period of four months. The opinion of our attorney is dated April 26, 1920, and copies of it were sent to members of the association.

(Said opinion marked defendant's Ex. A and introduced in evidence.)

At the general meeting of the association, held on May 19, 1920, it was determined to follow the advice of Mr. Newman and the collection and distribution of all statistics among the members of the association were suspended and were not resumed again until August, 1920. The minutes of the meeting of May 19, 1920, covered that action as they have been introduced in evidence by the Government. The allotment feature had been previously discontinued during March, 1920. The minutes of the meeting of May 19, 1920, have been introduced as Gov. Ex. No. 15-M. Following the action taken by the members of the association at the meeting of May 19, 1920, we suspended the compilation and sending out of all statistical information until August 7, 1920. Shortly prior to the receipt of Mr. Newman's opinion the association, on March 31, 1920, suspended the operation of the so-called allotment plan. I think this was done pursuant to Mr. Newman's advice. Article 14 of the articles last [fol. 265] above mentioned was abandoned on March 31, 1920, and was never thereafter put into force or effect, either by the association then existing or by any subsequent association. No allotment features were ever applied to any shipments subsequent to April 1, 1920. Article 17 of the articles last above mentioned was also discontinued on March 31, 1920, and was never thereafter put into force or effect by the then existing or any subsequent association. Article 18 of the articles last above mentioned was also discontinued or abandoned from March 31, 1920, and was never thereafter put into force or effect by the then existing or any subsequent association. None of the allotment features of the then existing or previous associations were ever resumed after March 31, 1920.

[fol. 266] During the period that these four articles of association which have been referred to by me were in force there was also in force or at least there was an agreement containing a provision for the carrying out of the minimum price plan. That is the minimum price plan dated July 1, 1915, introduced in evidence as government exhibit 11. That plan was entered into about July 1, 1916.

Q. How long did that continue in effect?

A. Well, this particular plan says July 1, 1916 to November 1, 1917.

Q. Was that plan or agreement in force during that period?

A. It was never enforced.

Q. When you said in your direct examination that it was never enforced will you explain just what you mean by that? What was done by the association then existing under this minimum price plan, government exhibit 11, if anything?

— Some of the statistical data and lists of surplus stock, etc. were submitted to the association, but no penalties or fines or assessments of any kind were ever made upon or claimed for or ever paid into the general fund or the treasury of the association or were demanded by the association. In other words, the members continued on and so far as my judgment and opinion goes they sold their flooring at whatever prices they pleased.

I had an opportunity to observe the prices the members were selling their flooring at this period from statistical data I received

from them and according to my observation the prices during all that time varied and we assembled considerable statistical data showing average prices realized, f. o. b. flooring mills and at different markets in the United States which will surely substantiate that statement. I might also add that no criticism was ever made by the officers of the association regarding the prices at which any member sold its flooring, and so far as I know no members of the association criticised other members of the association regarding the prices at which they sold their flooring or called them on the carpet as the [fol. 267] saying is. I certainly never did it as secretary of the association.

The Court: That doesn't answer the question, at least as I understood it. The question was this: Was there a general observance of the minimum price plan by the members of the association. In other words, did the members of the association generally refrain from selling below the minimum price?

A. According to my observation they did not.

Q. And that is what you meant Mr. Keehn in answer to Judge Fowler's inquiry as to whether or not this agreement was ever in force?

A. Yes. Of course, I used the term "enforced" and perhaps Judge Fowler said "in force."

Q. The agreement was signed and in operation?

A. And submitted to the government and held there pending a long time before the Federal Trade Commission. I had quite a considerable correspondence with the Federal Trade Commission in connection with this minimum price plan.

(Said correspondence, marked Defendant's Ex. B and B-1, received in evidence.)

[fol. 268] We never received any further communications from the Federal Trade Commission with respect to this plan.

Q. And so far as you know the Commission did not act upon the plan or the approval or disapproval of it?

A. Pardon me. I am going to see if there is further correspondence with them. (Looking through papers.) I do not find any further reply from them in reference to this plan of July 1, 1916.

It is my recollection that this minimum price plan of July 1, 1916, government exhibit 11, came to an end in November 1917, but according to this letter that we read today it seems to have been extended until January 1, 1919. I wouldn't be sure whether that letter refers to the articles of association. It might have referred to the minimum price plan because later on the minimum price plan was reprinted under date of January 1, 1919, running to July 1, 1919. That was the same plan, government exhibit 11, but a reprint of the same, together with the petition. It was not sent to the Trade Commission. I think it was given to Mr. McKeague when he was in Chicago.

Q. What was the status during that period from January 1919, on, with respect to the operation of this minimum price plan?

A. Mr. Johnston, there seems to have been an extension of some kind made in there, you know, between 1917 and January 1919.

Q. Well, during that period was there any change in the situation as you have described it in answer to my previous questions with respect to the operation or effect of this plan?

A. No sir.

Q. Was it in force in the same way that you have testified the original plan of July 1, 1916 was in force?

A. You mean "in force"?

Q. In force, yes.

A. We figured it was the same proposition all the way through. [fol. 269] Q. Was it enforced?

A. None of the provisions in regard to penalties, etc. of any of the minimum price plans were ever enforced.

The same condition existed all the way through as will be substantiated by our statistics.

I think this extended minimum price plan sort of dragged along and was terminated some time in February 1920 or ended or disregarded and then of course it was absolutely done away with, with all these other statistics on the allotment feature. I should say in April 1920. It was never resumed. On April 1, 1920, there was a suspension of all the activities of the association and that included the minimum price plan, and the compilation and distribution of statistics of all kinds and every activity of the association. For a period of some four months, the association was dormant as far as any activities were concerned. I think it was in August 1920 when we resumed any activities on behalf of the then existing association. We then resumed the statistical activities, picking up the statistical data for the months of April, May, June and July, which were afterwards compiled and put in our records to complete our annual statistics for the year 1920. By the resumption of statistical data I mean we resumed the receipt of these reports from members as to production, stock on hand and prices received for flooring, as I have testified in some detail. We did not resume any other activity. I mean specifically the allotment feature and acts growing out of the allotment feature or the minimum price plan. We felt we had a legal right to resume the collection and distribution of those statistical data among the members of the association and we waited patiently for about four months hoping that possibly the Supreme Court might make a final ruling in the so-called Memphis case.

[fol. 270] The association which suspended its operations April 1, 1920, and resumed its operations in August, 1920, came to an end on December 31, 1921. The duration of the articles was set for three years from July, 1919, but the association was terminated on December 31, 1921 and a new association was formed January 1, 1922.

[fol. 271] Q. That is the association that adopted the articles which on their face bear the date October 1, 1921, to July 21, 1922, and which have been introduced in evidence as Government's Exhibit 5?

A. These articles were never adopted, no, sir.

Q. Well, will you tell us just what did happen to those articles which you hold in your hand and which are Exhibit 5?

A. This was the proposed plan of reorganization, the allotment feature of the old articles of association, and it was thought that it could be formulated, dating from October 1, 1921 to July 1, 1922, but nothing ever came of it and the whole thing was dropped; because certain members of the association refused to enter into the plan. In other words, it was a proposed plan, and a plan that never operated in any way whatever.

A. Did you ever operate any of the allotment features under this proposed plan or any of the other features?

A. The plan itself never became a valid plan of any kind.

Q. And the articles of association weren't—

A. Well those articles of association were never adopted, or no statistical data or anything was ever done, because that never became operative.

Q. Then what articles were adopted for the association which succeeded the one which we have been discussing as having been formed, which was operating for a portion of the time under Exhibit 4?

A. Well allow me to see it please. Articles of Association bearing date January 1, 1922 to January 1, 1925.

Q. That is the present association?

A. That is the present association, but its organization was not fully consummated and officers elected until March 29, 1922. It was in the process of formation during that time.

Q. Now that I may be perfectly clear upon this subject, Mr. Keehn, from the time that you resumed statistical operations under the plan then in force some time in August, 1920, up to January 1, 1922, or until these articles of January 1, 1922, Exhibit 8, became [fol. 272] effective, did the Association, Maple Flooring Manufacturers Association or its members, engage in any activities other than the collection and dissemination of statistics?

A. You say up to 1922?

Q. Up to the adoption of these articles of January 1, 1922.

A. We should have to make some explanation in regard to the proposed minimum price basis which was brought up January 6, 1921.

Q. I remember that price basis. Now aside from that one exception, concerning which I am about to make inquiry, did the association engage in any other activities.

A. Other than statistical?

Q. Yes.

A. No, assuming that you mean allotment feature and minimum price plan or basis. Of course we had grading rules activities and advertising and other things like that.

Q. You had the ordinary grading rules and inspection rules and so on.

A. Yes.

Q. Now you have said that there is one exception, and that is so far

as the minimum price basis, so called, dated January 6, 1921, is concerned.

A. Yes.

Q. I call your attention Mr. Keehn to the minutes of the meeting of January 6, 1921, which has been introduced as Government's Exhibit 15-P, in which it is stated as follows: After referring to a committee and their report "the committee then made its report and the plan as formulated to be known as the minimum price basis was read and fully discussed by the meeting, and on motion was accepted. It was ordered that the minimum price basis as accepted be made a part of the minutes of the meeting and that copies of the same be sent to each member of the association." Now that was the minimum price basis.

A. Basis; yes, sir.

[fol. 273] Q. Which you refer to?

A. Yes, sir.

Q. And this date of January 6, 1921, was the date of its formal adoption?

A. We don't call it adoption, we call it acceptance; if there is any distinction between the two words I don't know.

Q. By approval of the members.

A. They accepted it but didn't actually adopt it.

Q. Looking at this Exhibit 13, will you point out in that exhibit whether or not it is provided, and where, that this plan before becoming effective and operative, was to be submitted to and receive the approval of the Federal Trade Commission?

A. In the last paragraph of Article 5 it states "It is understood that the minimum price basis shall be submitted to and filed with the Federal Trade Commission for its approval and that in the event of the Commission's disapproval the minimum price basis shall be null and void." Now I think if I read the minutes of the meeting of February 25, 1921, together with the correspondence with the Federal Trade Commission and the Department of Justice and what was done, it would clear up the situation.

Q. I just wanted to come to that. I want to ask first was the plan submitted to the Federal Trade Commission pursuant to that article which you have just read?

A. Yes, it was.

Q. Have you the correspondence in relation to that submission, and the action, if any, taken by the Federal Trade Commission, pursuant to your request?

A. Yes, sir; we have all of that.

Q. Will you give it to me?

[fol. 274] (Correspondence above mentioned marked defendant's Exs. C-1 to C-11, inclusive, and received in evidence.)

Immediately upon the receipt of Mr. Neberker's letter, dated February 4, 1921, my office advised all members of the association and a general meeting was held on February 25, 1921. According to the provisions of the so-called minimum price basis, the said basis auto-

matically became null and void. Upon the receipt of Mr. Nebeker's letter it was dropped. My recollection is that immediately upon receipt of Mr. Nebeker's letter no comparisons were made regarding the minimum price basis and the prices at which flooring was sold by the different members. I think a few of these comparisons were made in the early reports. According to my recollection we did not take steps to put the minimum price basis into practical operation, though we may have collected some data and have sent out a table of values, which I think we did on January 6, 1921. These data were compiled and sent out at the same time that the minimum price basis was submitted to the Department of Justice and Federal Trade Commission, which I think we did January 6, 1921, but after February 4, 1921, the minimum price basis was completely abandoned. Every detail of it was abandoned upon receipt of Mr. Nebeker's letter. Resolutions adopted at the general meeting of the Maple Flooring Manufacturers Association held at the Hotel La Salle, Chicago, February 25, 1921, declaring said minimum price basis null and void, providing that neither the association or its members should operate under the said minimum price basis, have been strictly followed in every respect. There never was in operation a minimum price plan or a minimum price basis after February 4 or [fol. 275] 6, 1921. Prior to the adoption of the Articles of Association, dated January 1, 1922, which have been introduced in evidence as Gov. Ex. No. 8, the same association that suspended its operations on April 1, 1920, and resumed them in August of that year was in existence. The Articles of Association, dated January 1, 1922, were formulated prior to March 1922 but it took until then to get them finally adopted.

The membership fee fund provided by Article 13 of the Articles of Association last above mentioned was for the purpose of providing assets for the work of the association. For example, we collect our advertising expenses and our general running expenses at the end of each quarter. In case any member of the association did not pay his advertising assessment or his expense fund assessment for the quarter, we would have the membership fee fund on hand. The association is required to enter into financial obligations for its offices and clerical help and must have assets to depend upon. The membership fee fund is not used in any way for the purpose of collecting fines or penalties or anything like that, or for the purpose of securing [fol. 276] prompt reports. There are no fines or penalties of any character provided for in the Articles of Association. No fines or penalties have ever been imposed or collected. I might say also that we have this fund partly as an asset in case any member of the association should refuse to pay the cost of re-inspection, where his flooring was found not to be up to grade, we would also have something to fall back on. For example, we guarantee to the public that our grades are standardized and that the flooring sold by members of the association is up to grade. If a member of the association should ship a considerable quantity of flooring and the purchaser should complain that it was not up to grade and a re-inspection was made that sustained the purchaser and the member refused to pay the re-

inspection cost, we would have nothing to fall back upon, in the absence of the membership fee fund, particularly if the member happened to be in arrears on his advertising fund assessment. No occasion has ever arisen to resort to this fund because of the failure of a member to pay the cost of re-inspection.

The association has an official inspector and also a field representative who has been employed by the different associations for a great many years. This inspector makes frequent trips to the flooring mills to see that the flooring is kept up to the standards to satisfy the association. If any purchaser complains that the quality of the flooring is not up to standard grade we send this inspector or some other inspector to re-inspect the flooring and if there is a variation of more than 5% of it below the standard grade, then an adjustment is [fols. 277 & 278] made with the purchaser. That applies to any shipment in the United States from any member of the association. In order to provide for the general expenses of the association we make an assessment of 25 cents per thousand on the shipments of each quarter. We started our originally with an advertising fund of 10 cents per thousand on shipments during each quarter and that assessment was afterwards raised to 25 cents per thousand feet of flooring shipped, that is, 25 cents per thousand feet shipped by each individual member of the association. There is some effort now being made to increase the advertising assessment to 40 cents per thousand, but it has not yet been agreed on. This increase was suggested on account of the competition of oak flooring and other flooring materials. It seems necessary to expend more money in advertising in order to hold our places in the market. We raise funds from the members in proportion to their volume of business. The advertising fund, of course, is spent for advertising maple flooring and also covers the field representative work. For example, we recently set Mr. Robertson to California to investigate the competition of Philippine mahogany. This flooring is known as Begac and Orion. We have been informed that these floorings were coming in from the Philippines and were supplanting maple and beech for school houses and other business in California. Mr. Robertson does considerable field work during the year. The general expense fund is used for maintaining the work for the association. Our shipments for the year 1922 were 135,000,000 [fol. 279] feet, 25 cents a thousand for expenses would be \$38,000 and the advertising would be \$38,000 more. We spend the advertising found as we go along. In fact, in 1922 we expended altogether for advertising in the neighborhood of \$48,000. In the first half of 1923 our advertising expenses would be in the neighborhood of \$20,000 or \$25,000. The general expense fund takes care of the salaries of the Secretary, employees, telephone, telegraph bills, expenses of members attending meetings, stationery supplis, printing, legal expenses, etc. We collect only sufficient money to cover actual cost of operation. The assessments are not intended to build up any fund. There are no dues other than the assessments above mentioned. The membership fee fund is invested in Liberty Bonds instead of being deposited in the bank or Trust Company, as provided in the Articles of Association.

The membership fee fund, together with the assessments above mentioned, are the only moneys we collect or have, except that at the present time we have what we call a "Legal Defense Fund," which was created for the purpose of paying expenses of this litigation. Article 14 of the present Articles of Association covers the ascertainment of the cost of manufacture. Paragraph F of said article has been eliminated. In determining average costs there is no element of profit whatsoever, according to my theory of accounting and business practice. The references made in the various exhibits to the additions for profit are to the minimum price plan or basis, the operation of which ceased some considerable time before the adoption of present Articles of Association.

[fol. 280] Q. Those additions of profit are not made, and have never been made, under the present Association, have they?

A. No, sir; not as a profit feature.

Q. And there are no profits added in to these items of cost as determined under Article XIV?

A. No, everything has been done strictly according to Article XIV.

Mr. Fowler: He said, "not as a profit feature." What does he mean by that? Let him explain?

Q. Just what do you mean by that?

A. Of course, I recall that the Government charges in its petition that this 5% as a reasonable allowance for manufacturing hazard, is substituted as a profit. We claim that it is not substituted as a profit, but it is a reasonable allowance for the hazards of a manufacturing operation.

Q. Will you explain a little more in detail that addition of 5%—which, by the way, is not made today?

A. No, it is not made today.

[fol. 281] This item of 5% is to provide for contingencies in unforeseen hazards in manufacture. In the manufacturing of flooring there are frequent interruptions, sometimes strikes, sometimes lock-outs and sometimes shut-downs. It also very frequently happens that there is a decline in the market price of the raw material before the flooring can be processed and marketed. Then it also frequently happens that there may be a marked decline in the price of flooring before it can be marketed. In talking with different flooring and lumber operators, it was thought that an allowance of 5% to cover this hazard was a reasonable one when spread over a period of years. The rest of our cost survey, where we speak about interest on capital invested, average cost expenses, allowance for depreciation, are justified by the prospectus of H. S. Graves of the Forest Survey in 1913 regarding the sale of timber in Idaho in the Peace River Valley. He lists certain items of interest and depreciation and assumes that the lumber business, on account of its very hazardous nature, is entitled to a profit of 12% on sales. His statements are referred to in our petition to the Federal Trade Commission. We received a copy of the Graves report in 1913, addressed to the Maple Flooring Manufacturers Association, signed by Mr. Graves, in which these items were enumerated.

[fol. 282] The Court: Do you include in that 5% the hazard of bad accounts?

A. There is no hazard of bad accounts in our manufacturing and marketing costs. We do not allow for that. There is a hazard of bad accounts, and that is—

The Court: I asked if it was intended to include that?

A. It included all contingencies and hazards incidental to manufacturing operations, and of course, our manufacturing and marketing costs do not provide for bad debts.

[fol. 283] The 5% provided for in Article 14, together with some other provisions of the articles of agreement, introduced in evidence as Gov. Ex. 8, have been changed or modified. This modification was made in July, 1923, and notice of it was sent in a circular letter to the members in August, 1923. These are the papers relating to the changes in question.

(Said paper marked Defendants' Ex. E and received in evidence.)
Through inadvertence there was no Defendants' Ex. D.

The resolution contained in the minutes of the meeting held July 19, 1923, entirely eliminates from Article 14 that provision of the articles of January 1, 1922 which provided that in addition to other actual marketing and manufacturing costs which I have described in some detail, was to be added 5% to cover unforeseen hazards. On and after July 19, 1923, that addition of 5% was not used in the preparation of our average costs made from time to time and that 5% is not now included in the average costs prepared by me and on behalf of the association, and it is not used or considered.

Q. Now will you turn to this government exhibit 35 and point out what portions thereof pursuant to the statement contained in the letter of August 2, 1923, which I have just read, have been eliminated from the rate book and are now eliminated therefrom.

A. The title has been changed somewhat. The paragraph on page 2 underneath the word "key" has been eliminated. That says, to ascertain delivered costs at an unlisted point allow 25 cents for each one cent difference in the rate of freight between the nearest listed point and the unlisted point from point of shipment. Then follows a list of the states in alphabetical order and a list of the towns in the various states and these towns and sheets were printed from time to time to conform with any changes that may be made in the freight tariffs.

Q. Has the form of that data been changed in the present book?

A. The form of it has not been changed.

Q. Such changes as have been made are merely to bring it up to date.

A. To bring it up to date, to revise it and bring it up to date.

Q. Will you now proceed to the next point in the rate book where there is a change or eliminated of any matter.

[fol. 284] A. The so-called differential sheet has been eliminated entirely from the rate book.

Q. How is that designated?

A. The subject is differentials, one page is headed from Aver-

age Cost Chart of maple 13/16 inch D & M May 31, 1922; Average Cost of beech 13/16 D & M, all faces. That is a paragraph with matter underneath it.

The next paragraph Average Cost of Birch 13/16 inch D & M, all faces with the differentials underneath it. Average cost of wide faces D & M. Average cost of thick flooring D & M. Average cost of jointed floorings. Then the next page is differentials, Average Cost, Special grades showing the white clear maple and the red clear beech and the red clear birch. Then follows on 13/16 inch thick. Then differentials in respect to those special grades on the 3/8 inch thickness. Then the average cost of extra sorts, clear maple, beech or birch, 13/16 thick etc., under 22 inches long in the clear grade and under 16 inches long in the number one grade and under 16 inches long in the—it is all in the number one grade. That has been eliminated.

Then on the next page are the Terms of Sale: 60 days net or 2% discount—etc., which we need not read in full perhaps. That has been entirely eliminated. This differential sheet is dated May 31, 1922.

Q. Then as I understand you there has been eliminated and does not now appear in the rate books issued by the Association to its members any statements as to so-called differentials or any statements as to terms of sale?

Q. All of that data is out of the rate book?

A. Yes.

Q. And is not distributed to the members of the Association in any other form?

A. No, sir.

Q. Or in any other way?

A. No, sir.

The Court: Let me ask a question: Have there been any considerable changes in these differentials, so-called, or in the terms of sale, over a period say of two or three years?

A. There may have been changes in the differentials from time to time depending upon the market cost of the raw material, etc. Of course the terms of sale some members use whatever terms they please, there has been no hard and fast rules with reference to terms of sale that the members have been obliged to observe. The terms of sale have varied greatly depending upon which market you sell in. Very frequently the buyer insists on his own terms of sale and a manufacturer cannot enforce his terms of sale.

[fol. 285] The Court: For instance, the first differential in this sheet before me is the average cost of beech, 13/16ths dressed and matched, all faces?

A. Yes.

The Court: And clear, that is clear beech \$10 less than maple?

A. Yes.

The Court: Has that been the differential substantially?

A. Not at all times. It depends upon the supply and demand of these different floorings, to what a man's stock conditions are, and

the cost of it too. Beech lumber ordinarily costs in the market less than maple lumber and consequently the cost of the beech flooring would not be as much as the cost of the maple flooring.

The Court: I understand, but has the difference been substantially the same over a considerable period of time?

A. I would say yes in a general way.

The Court: And the same would be true as to birch?

A. Sometimes birch flooring brings more than maple, sometimes it sells for less than maple, that depends upon the supply and demand and the stock conditions of the members selling the product. A good many of them don't manufacture beech flooring and a good many of them don't manufacture birch flooring and some manufacture only maple flooring.

The Court: The next that I find is the Average Cost of wide faces. Has there been any substantial change in the differences between prices of the $2\frac{1}{4}$ —which I understand to be standard?

A. Yes.

The Court: And the wider?

A. That might vary from time to time for the same reasons.

The Court: Has it?

A. I think it has.

The Court: Substantially varied?

A. I can look that up and make a comparative statement of the costs during a period of time of those different things.

The Court: The next item is the average cost of thick flooring, as I understand it, the standard is 13/16th—?

A. 13/16ths.

The Court: Has there been any change, substantial change in the differences between the price of 13/16ths flooring and say 17/16ths? [fol. 286] A. There would be differences back and forth, the 13/16th inch flooring is manufactured from four quarter maple lumber and the inch and 16th maple flooring is manufactured from five quarter thick maple lumber.

The Court: The difference is caused then by the extra material which is used?

A. The market cost of the five quarter lumber is generally considerably higher than the four quarter lumber. On some markets it might be ten dollars, on others eight dollars, on others five dollars, of course that cost would all be regulated by supply and demand. Some of them manufacture thick flooring, many of them don't manufacture it at all. The cost would vary you know with the different conditions. The principal cost I would say—

The Court: That difference would be almost a matter of computation, wouldn't it?

A. A matter of computation, yes, sir. I would say the principal difference would be caused by the difference in the market value of five quarter maple lumber and four quarter maple lumber rough stock. The same thing would apply to those special grades of white clear maple and red clear beech and red clear birch.

The Court: Are jointed floorings as a rule higher in price than dressed and matched?

A. Sometimes it is and sometimes it is not. I think sometimes it brings about the same price and sometimes it brings more.

The Court: Very well. One question more: The terms of sale, have they varied materially over a considerable period of time? Isn't the usual term 60 days net, or 2% for cash?

A. I think that has been the general custom in the lumber industry, 60, 2 off ten, sometimes 60, 2 off fifteen.

The Court: It prevails in all branches of the lumber industry, doesn't it?

A. I think in a general way it does. You know some buyers in [fol. 287] the eastern market, for example, will not follow such terms. They insist upon the discount 5 days after arrival of car or two days after arrival of car. The same is true with respect to shipments to California. Purchasers out there also insist upon the discount so many days after arrival of car. My observation has been that manufacturers are compelled to concede to the terms of buyers in different markets, according to the customs in force there. These different customs have always prevailed in different parts of the United States.

[fol. 288] The differentials and the terms of sales, which were formerly on colored sheets in the freight rate books, are no longer contained in such books and are no longer sent to members in any form. The delivered cost charts have been entirely eliminated from the freight rate book. The freight rate book now issued by the association contains the freight rates from Cadillac, Michigan, to points all over the country and the average cost chart of 13/16" maple flooring, F. O. B. cars at flooring mill, according to compilations of average costs that are made from time to time. The freight rate book also contains average cost of 3/8" beech or maple, F. O. B. cars flooring mills, and the average cost of freight, which is a table showing what the cost of freight would be on 13/16", and also on 3/8" flooring on certain rates of freight and on certain weights. For example, 13/16", 1 1/2" x 2" and 2 3/8" face weighs about 2,000 pounds and the rate of 20 cents would indicate that the cost of the freight would be \$4.00 a thousand. The 13/16" x 3 1/4" weighs 2,250 pounds and the cost of freight on that would be \$4.50 a thousand. 3/8" flooring weighs 1,000 pounds so that the cost of that on a 20 cent rate would be \$2.00. This table appears in the back of the book. The grading rules also may appear from time to time in these or different books. The purpose of the table or chart, with respect to ascertaining the cost of freight, was in order to enable a member to find out what the cost of freight would be on any given rate of freight from point of shipment to point of destination. That is a mere matter of computation [fol. 289] and could be left out. The average cost which appears in the rate book is the average cost of flooring about which I have heretofore testified. This average cost is based upon test runs. For example, our present average cost of maple flooring, F. O. B. cars at the flooring mills, are based upon five test runs which were made by different members of this association since its organization. These average costs are determined from time to time whenever there are changes in the cost of rough maple lumber, F. O. B. cars

at flooring mills, and also whenever there are changes in the average manufacturing and marketing costs. We might issue one every two or three months or every three or four months, or oftener if there are violent fluctuations in the cost of rough maple lumber. I have here a rate book which will illustrate just what we are doing today.

(Said rate book marked Ex. F and the data that had been eliminated from said book marked Ex. F-1, and said exhibits were received in evidence.)

I have here weekly sales reports made prior to as well as subsequent to my letter of August 2, 1923, addressed to members.

(Said sales reports marked defendant's Exhibits G and G-1, dated respectively July 13, 1923, and November 9, 1923, and were received in evidence.)

This report is dated July 13, 1923, Record of Completed Transaction. Report of Sales made during the week ended July 7, 1923.

That gives the date of sale, the quantity sold, the description of the flooring, the delivered price, the average freight rate, the commissions and the identifying number of the mill reporting.

[fol. 290] And it also shows total sales made by each individual member who made this report. That is tabulated and goes along all the way down. Then the total reported by the 16 members who made the report is given as 892,004 feet on this particular one. Then the average of sales for the week ended in this case July 7, 1923, is given. The averages of the delivered prices for 13/16ths by 2¼ inch face clear, number one and factory maple flooring, standard grades and length is shown in the clear grade, number one grade and the factory grade. Then the averages of average freight rates is also shown. Then the average cost of the freight is also shown. Then the averages of prices realized F. O. B. flooring mill basis is shown. In this case it was \$105.74 for Clear. \$93.50 for number one, and \$49.50 for Factory. Then the total sales of 13/16ths by 2¼ inch face maple flooring is shown, in this case 192 M clear; 149 M feet of number one and 78 M of factory. A total of 419 M. This is the report of completed transactions dated November 9, 1923.

Report of Sales made during the week ended November 3, 1923. In this case we give the date, the quantity, the description, the delivered price, the average freight rate and the commissions. The identifying numbers are omitted and there is no total to show how much any one member of the Association shipped. Then the movement of the stock is indicated in this report by the total quantity of sales made by the members whose factories are located in Eastern [fol. 291] Lower Michigan. In this particular week they sold 716.797 feet of flooring.

"The Court: You had a chart here the other day that showed the number of those mills.

A. Yes, that is, the members that reported, perhaps all the members did not report. There are four mills located in Eastern Lower

Michigan, no one knows which mill sold the goods or how many feet of flooring each mill sold or anything at all about it.

Q. Does it show whether all of the group reported or not?

A. Yes, it may show in the later point. In this particular case it says no report from number 37, 23 and 22; all the members in Eastern Lower Michigan reported because none of those identifying numbers indicate a mill in Eastern Lower Michigan.

Then we come on to Western Lower Michigan, the same thing is repeated, dates, etc., then a footing is made showing 489,322 feet was sold by the mills in Western Lower Michigan, that constitutes six mills. One mill in that group did not report that week. There is no way of identifying which sales were made by which member or the quantity any member sold or where he begins and where he leaves off. Then in the next group the same thing is repeated, upper Michigan mills, 616,000 feet sold. In Upper Michigan there are four mills and all the members in that district reported.

The next group shows Wisconsin mills. Their reports are 115,800 feet for that week. And all the mills in that group reported [fol. 292] with the exception of one member.

Now the miscellaneous mills, we just run those in together because that represents Chicago, St. Paul and upper lake mills, could not arrange those by individual group because that would indicate which mill sold the goods and what the price was and all about it.

The bottom of the sheet we show the average of sales for the week ended November 3, 1923.

13/16ths x 2 1/4 inch face clear, number one and factory, maple flooring, standard grades and lengths; averages of delivered prices \$98.62 for clear; \$87.57 for number one and \$52.58 for factory.

The averages of the average freight rate was 29 cents for clear, 26 cents for number one and 32 cents for factory.

The average cost of freight was 5.80 on the clear, 5.20 on the number one and \$6.40 on the factory. The factory appears to have moved to more distant points.

Averages of prices realized F. O. B. flooring mill basis was \$92.82 for clear, \$82.37 for number one and \$46.18 for factory.

As compared with prices on July 7, 1923, of \$105.74 for clear, \$93.50 for number one and \$49.60 for factory, showing a decline in the market has taken place since that time.

The movement of the stock for this particular week is also shown, 13/16th x 2 1/4 inch face maple flooring, the clear is 620,000, the number one 416,000, the factory 260,000, the total 1,296,000. In [fol. 293] this particular week of November 3 there is 2,118,000 feet sold by the 19 members who reported.

Q. To summarize: the differences between the report of completed transactions as made prior to the 19th of July, 1923 under the Articles of January 1, 1922, and the reports of completed transactions made subsequent to July, 1923, are what? How can you state that briefly?

A. Just as indicated in the resolution.

Q. The elimination of the identifying numbers?

A. Yes, everything provided for in the resolution and our letter to the members addressed on August 2nd or 3rd having been fully complied with.

Q. And the information is not transmitted to members in any other form?

A. Not disclosed to the members or transmitted to them in any other form whatever.

Q. Access is not given by you to the members of the Association—your files and records would show the reports of the individual members?

A. Never, that has never been done, never been requested by any member of the Association. Of course a member can see his own reports if he wants to, but nobody has ever asked for them."

Changes were also made in the form of monthly reports which the association has sent to members subsequent to July 19, 1923. I haven't any more copies of such reports. I have samples of monthly [fol. 294] reports made both before and after July 19, 1923.

(Three samples of monthly reports marked defendant's Exhibits H, H-1 and H-2, respectively, and received in evidence.)

The report for June, 1923, was made out July 13th, 1923, before this action was taken at the general meeting of the Association, etc.

The report for June, 1923, was made out July 13th, 1923, before this action was taken at the general meeting of the Association on July 19, 1923. Now the reports for July, 1923, and for September, 1923, are made out in accordance with the changes made at the July 19, 1923, meeting. What we say about July would also apply to the month of September. We need not go into those details. The Barometer sheet, as we call it, meaning stock conditions and Barometer for June, 1923, compared with the same month a year ago on both sheets is exactly in the same form as to principle. In the report for June, 1923, the maple, beech and birch flooring statistics in thousands of feet for the month of June, 1923 and 1922 are compared. This gives a list of the names and the numbers of the members of the Association, it shows their individual stocks on hand, on June 30, 1923, and 1922. The same as to their individual unfilled orders. It shows their total shipments individually for June, their production the same, and the new orders the same and the [fol. 295] individual stock changes, increases and decreases in June, 1923 and 1922. So from this report any member of the Association would be in a position to know exactly how much flooring, how much unfilled orders, how much shipments, production, and new orders was of every other member of the Association during the month of June in question. Then the totals are given at the bottom. Then a comparison is made with the previous month, etc. This page has been eliminated entirely from reports subsequent to July 19, 1923.

The second page of that report is a new report, shows maple, beech and birch flooring statistics in M feet. June 1923—1922 compared, showing the stocks on hand, the unfilled orders on hand, the shipments, the production, the new orders and the stock changes during

the month of July, 1923 and 1922 by totals in geographical groups. It shows how much stock on hand, how many unfilled orders, the members in Eastern Lower Michigan held, the same applies to the Western Lower Michigan mills, upper Michigan mills and Wisconsin mills and Chicago, St. Paul and Upper Lake mills, and the total stocks on hand were given for the 21 mills. That shows you increase or decrease from last year with the percentage. The unfilled orders are handled in the same way. The shipments are shown in total by geographical groups and by the total number of mills in the Association. The production the same way. The new orders the same way and the stock changes the same way. So under this form of report it is impossible for any member of the Association no [fol. 296] matter where his mill is located longer to have this individual intimate knowledge of members business.

"Q. Are there any other changes in the monthly report?

A. In the old form of report we made what is known as record of average prices realized F. O. B. flooring mills in June, 1923, for new orders booked, for 13/16th by 2 1/4 inch face clear, number one and factory maple flooring, standard grades and lengths after deducting freight.

That shows the mills in Eastern Lower Michigan who made the report and the ones in the Western Lower Michigan and the ones in Lower Michigan and Wisconsin as a group and Upper Michigan and Wisconsin. Then it showed Michigan and Wisconsin together average, then Tupper Lake, N. Y. mill, then St. Paul mill and Chicago mill. In this tabulation or statement rather it gives the identifying membership numbers of each member of the Association. It shows exactly what the member realized during the month of June on all sales made during that month for these grades of flooring after deducting freight. For example, it shows No. 2 got \$107.41, for clear; \$101.05 for number one and \$58.00 for factory. Of that number 33 got \$105.70 for clear; \$95.62 for number one and \$51.00 for factory.

Now we come down to the next group and it shows the same principle all the way through, so we need not read that. Then all Lower Michigan mills are put together in one group and the average is [fol. 297] taken. Group D shows it in the same way and the average is taken, and average is taken for all of them in Michigan and Wisconsin.

Q. That you are talking about was the June statement?

A. For June, that sheet has been entirely eliminated from the report in respect to the identifying number—perhaps I should say that the identifying numbers have been eliminated. In this report the identifying numbers are eliminated but I will give what it says and then that will explain what it is; range of average prices realized F. O. B. Michigan, Wisconsin flooring mills in 1923; for new orders booked for 13/16 x 2 1/4 inch clear, number one and factory maple flooring, standard grades and lengths after deducting freight. That shows a range of prices in July for clear, number one and factory by the mills who reported from Eastern Lower Michigan classi-

fied by us as Group 1, the identifying numbers are omitted and the sales are recorded according to the range you know, not by any secret system of 2, 3, 4, 5 or anything like that, by groups, group 2 Western Lower Michigan mills, 5 members report that month and it shows the range there for the clear, number one and factory. Then Group 3, which is Upper Michigan, four members report that month and it shows the range of prices. Group 4 Wisconsin mills two members report, with the range of prices, everything from low to high, just the range. All Michigan, Wisconsin mills are averaged, it is an arithmetic average or simple average. This report was [fol. 298] received from 14 members, one member reported no sale because he had no stock on hand I think.

Q. You give the identifying number there?

A. Yes, perhaps we should not do that. Then we say, no reports from Nos. 49, 23 and 45. Reports of numbers 48, 22 and 51 omitted to avoid disclosing their identity, we could not put them in a geographical report without disclosing their identity.

Q. Are there any other changes?

A. The next group of reports which we call Miscellaneous Reports are carried on in the same way, no identifying numbers on them anyway. We have shortened up this reduction because it got to be so cumbersome it wasn't worth while. The lower part of the report we changed somewhat to reduce the clerical work and because some of that intermediate stuff was not of any particular value. The average prices realized f. o. b. Michigan and Wisconsin mills for 13/16ths by 2¼ inch face maple flooring in the old form we took 1916, 1917, 1918, 1920, 1921 and 1922 June of each year, and we used June 1916 as a hundred per cent. This time we take July of the years 1913, 1923, 1922 and the year 1920 and we use July 1913 as a hundred percent having gone back to 1913 because that is the basis of a hundred percent as used by the Government. It so happens in flooring we could use 1916 as well as 1913 because they were practically the same both years. This was to shorten up the form.

The next report is exactly the same form, that is called maple. [fol. 299] beech and birch flooring on hand at the end of the month whichever it may be. It shows clear, number one and factory of all three woods, it shows the thicknesses and faces. Then below is shown the maple, beech and birch, unfilled orders on hand at the end of the same month and that includes all maple, beech and birch flooring, that is the same form.

The next form is maple flooring on hand at the end of the month where the maple flooring is considered by itself; that is in the same form except we show the percentages sold of 13/16ths inch and a half face, two inch face, two and a quarter face, three and a quarter face and inch and 16th all widths. That form, we are reporting that the same as we did before except there may be a few changes. What I mean to say the maple flooring report is a little bit different than the consolidation of the maple, beech and birch. The maple, beech and birch, at the right hand side, we show the per cent sold of the clear, the number one and the factory. We do the same also on the maple.

Now the next report under the old form surplus maple flooring, June 30th, 1923. That showed the surplus in the clear, number one and factory and the identifying numbers of the member who had these surpluses.

The Court: That is all over and above 100,000 feet?

A. Yes, items are listed as surplus and the stocks on hand exceed [fol. 300] unfilled orders by a hundred thousand feet. That shows which members had them, the size and grade, etc. and then we compare with a year ago, the quantities I think are given too, the quantities on hand by each individual member and the amount unsold by each individual member. All of that has been eliminated and we now show the maple flooring stocks as to how many mills have stocks in any particular group but not which mill it is. Then we compare that with a year ago in total but not by individuals. There are no identifying numbers of any kind on this report now to show who has the stock. It shows where it is located as to primary market as you might say, primary producing market. Then we give below a list of the mills constituting different groups. I might say that this listing, this memorandum of stocks often facilitates the interchange of business among the members of the Association. Heretofore he would write to some individual member and find out how much and what he would sell it for. Now, he would have to write to every member of the group to find out who had this stock. Under the old plan might save writing to 20 or 21 members of the Association. Now the beech flooring on hand and the birch flooring on hand, that is the same principle as heretofore. 21 members of the Association manufacture maple flooring and then there is 12 of the members who manufacture beech flooring, 15 of the members who manufacture birch flooring, some manufacture one wood, some two [fol. 301] woods and some all three woods, etc. Then on the last sheet we continue the same as we did before to give the date of the receipt of the reports.

Q. What is the object of that compilation?

A. Well, it doesn't mean anything in particular, it just shows who is tardy, who might be thought to get them to make their reports more promptly. They are supposed to make these reports on or before the 5th of the following month, sometimes they drag along and I always carry them until the middle of the month or even later. We simply make a record of it so people will know what may have caused the delay or something like that.

Q. No penalty is enforced?

A. No, no penalty of any kind enforced for not reporting promptly, no criticisms made for not reporting promptly. We frequently urge them to send in their reports more promptly so we can keep our office work up and get our statistics out more promptly.

Q. Have you completed the comparison then?

A. I think everything is covered here and what applies to the month of July applies to the month of September. That left here June, July and September."

The quarterly report would be just the consolidation of the three

preceding monthly reports in total compared with this year and the year before. We have the quarterly surveys of manufacturing and [fol. 302] marketing costs. They do not contain any identifying numbers. They simply show averages. The tabulation that we showed Judge Sessions, however, contains identifying numbers, but such a tabulation would be kept in my office. Only the averages are reported to the members of the association. Tabulation showed to Judge Sessions is not open or available to members.

The Court: In your last sheet of your monthly reports you give the identifying numbers of the mills which have failed to report; and going back to the report of unfilled orders and stock on hand, you say "Western Lower Michigan, reports" so and so, and then coming over to this last sheet you say number so and so maybe has not made any report as to stocks on hand. Of course, that enables the member to whom this report is sent to at once eliminate number so and so, who has failed to make a report, if he wants to make inquiry as to who has the stock on hand?

A. Well, the monthly stock reports, your Honor, are made by every member of the Association; in the weekly sales report we know which member did not report his sales for that week. In the record of "Average Prices Realized per month" we know which member did not report his sales for the month; but on the stocks and unfilled orders, shipment and production and new orders booked, every member of the Association makes those reports in full, so there is no way for any member to figure out how much stock any one member has, because it is all there in the aggregate.

[fol. 303] The Court: Now, if a member wants to ascertain where there are stocks on hand, in substance, the difference between the old and the new method is, that he has got to make a further inquiry, of say four mills instead of one?

A. You mean, in reference to surplus stocks?

The Court: Yes, in reference to surplus stocks.

A. Yes, he would inquire of four mills.

The Court: Under the old system he could locate the surplus stock at once, because you give the identifying numbers and the amounts of stock on hand.

A. Suppose a member wished to buy fifty thousand feet of 13/16ths x 2 1/4 Maple flooring, if he looked in the old sheet he could tell which member had this surplus stock on hand, and he could write to the member. Now, if he wants to buy thirteen-sixteenths x 1 1/4 No. 1, if he finds that is located in a particular district, he would write to that district. If there was no one listed there, he would have to write to the other members of the Association, it is simply to facilitate the exchange of business.

The Court: I don't quite follow that. I don't quite follow the last part of your answer.

A. In which respect?

The Court: You say, if there is no one listed there?

A. If there is no surplus stock indicated on the surplus stock report.

The Court: Take Eastern lower Michigan, he would know there would be no use to write to those?

[fol. 304] A. Yes, sir.

The Court: That group would be eliminated?

A. Yes.

The Court: If there were reported surplus stocks in Western lower Michigan, he may have to write six letters instead of one?

A. Yes.

The Court: In order to locate that stock. In other words your system is not as complete as it used to be?

A. It doesn't show who has any surplus stocks; it doesn't reveal the identity of any manufacturer as to who has surplus stocks.

Mr. Johnston:

Q. In other words, Mr. Keehn, if a member is to ascertain the facts with respect to stocks on hand, prices realized, or other data, individually as to any member, he must obtain that by going directly to the member himself—it is not disclosed by the Association?

A. That is correct.

Q. Whether that member is willing to disclose those facts to the other member is a matter which rests with him entirely?

A. That is a personal matter between themselves entirely.

Q. But there is no understanding or agreement in the Association between the members, as members of the Association, that such data [fol. 305] will be interchanged upon request by any member?

A. No sir; we do not exchange any individual data in any form or manner between different members of the Association, or among any of the members of the Association. Whatever information any member may know about individual stock conditions of the other members, the only way he can obtain it is by correspondence direct with the member. All reports are now sent out without any comments, analysis or interpretation of any kind. We consulted our attorneys about these different matters some time after the Supreme Court handed down this decision in the so-called Memphis case and they advised us as to how the activities of the Association should be conducted and we have strictly followed their advice in every respect. The statements are now sent out simply as statistical data and without comment, analysis or interpretation for each member to analyze and interpret for himself and draw his own conclusions. A copy of the opinion of our attorney is attached to the minutes of the meeting, January 12, 1922."

(Said minutes marked defendant's Ex. I and received in evidence.)

[fol. 306] Q. Now, referring to the first paragraph of that conclusion in Mr. Newman's opinion of January 11, 1922, since the organization of the present Association, that of January 1, 1922, have you as Secretary of the Association, or has the Association sent out to its members recommendations or forecasts as to the market prices or market conditions?

A. Not as to market prices, but sometimes as to the results of the

month's business, as is shown by what the Government calls "Forecasts." We explained that in our previous testimony, where certain data is collected regarding stocks, production, new business for twenty days in the month, and then the estimate is made as to what the business may be, the remaining ten days of the month, and that is compared with the totals of the preceding month. But, there have been no individual figures given. That appears in the minutes of the various meetings.

Q. What are those entitled?

A. It is an estimate of how the business for one month may compare with the business of the preceding month, based upon the data furnished by the members who may report it. If you will pardon me, you will find July 19th, 1923, and that will tell the story.

Q. That is what we want exactly.

A. That is in a previous exhibit; you have that exhibit already in.

Q. That is the one already in?

A. Yes.

The Court: There have been several of those exhibits. As I remember the testimony, it was this. For instance, if a meeting of the Association was to be held on the 25th day of November and the notice was sent out on the 18th day of November, the data accumulated from the reports of members up to the 18th or 15th, whatever the date might be, would be given, and the statement would be made that the indications are that if production holds up during the balance of the month, the month of November will compare with the month of October, or the month of November of last year in the following manner:

A. Not as to last year; just for the preceding month.

The Court: That may be.

Q. That is the matter that you refer to.

A. Yes, sir.

Q. Now since the organization of the present Association has anything else been sent out to the members of this Association?

A. According to my recollection, we make no comments or interpretations, or forecasts regarding the future in the industry, except as outlined here, what we term classification, etc. The reports speak for themselves. I don't know whether you consider the tabulations [fol. 307] of statistics according to grades and faces, a classification or not.

Q. Of course the statistics those are the classification?

A. The statistics themselves speak for themselves.

Q. What I am referring to particularly, is, any interpretation matter going along with or at about the same time with the statistics, either weekly or monthly statistics go out?

A. No, sir.

Q. In which you say to the members "these show so and so" and "indicate so and so for the future, anything of that character?"

A. No, sir.

Q. Under the present Association?

A. Under the present Association.

The allotment plans previously mentioned related solely to shipments and had nothing whatever to do with production. The classification of statistics contained in Mr. Newman's letter of January 11th, 1922, embraces all the statistics that we sent out.

"Q. Will you start back at a period somewhat earlier than the 1922 Association and tell us exactly what you have done with reference to the publication of the statistics compiled by you as Secretary of the Association, and with the furnishing of such statistics to public bodies?

A. I might say that in April, 1921, we received a request from the Federal Reserve Bank of Chicago for statistical data of various kinds regarding the Maple Flooring industry, and we have a letter here from them, and also a copy of our reply and memorandum regarding the data which was sent to them at that time. It is a very short letter and if there is no objection I can read it.

[fol. 308] Q. You may read it.

A.—

'Federal Reserve Bank of Chicago, 79 West Monroe Street

April 6th, 1921.

Maple Flooring Manufacturers Association, 30 North La Salle Street,
Chicago, Ill.

GENTLEMEN:

Will you kindly let us know what statistical information you might be able to furnish us regarding production shipments, and orders received in the flooring industry?

We should like to obtain authoritative information as to the activity in this industry—what changes have taken place since the previous month; since last year; and since normal or pre-war times.

Are there any factors especially affecting the market at the present time?

Very truly yours, W. A. Heath, Chairman, By Frank M. Huston.

On April 30, 1921, we wrote to the Federal Reserve Bank, Chicago, 79 West Monroe Street, as follows:

'Replying to yours of the 6th, we are very glad to give you the statistical information you request regarding production, shipments and orders received in the Maple Flooring industry, and are enclosing herewith the following data:

1. Average stocks on hand during each year from 1912 to 1920 inclusive.

Average unfilled orders during same period.

The total shipments, production and new business booked in each year during the same period.

2. Reports comparing our statistics during the years 1920-1919.

You will note that in 1919 stocks on hand, which were 28 millions on January 1st, decreased to less than 8 millions at December 31, 1919, whereas in 1920 the stocks on hand increased from 8 millions to over 32 millions on December 31st.

Unfilled orders which were 8 millions on January 1, 1919 increased to 52½ millions on October 1, 1919, since when they have dwindled to about 5½ millions on December 31, 1920.

[fol. 309] During the last half of 1920 compared with the last half of 1919, shipments decreased 50%, while production decreased only about 12%, which, of course, accounts for the large increase in the stocks on hand.

New business booked during the last half of 1920 was only 25% of the new orders taken during the last half of 1919.

3. Statistical reports showing stocks on hand on April 1, 1921, and total shipments of Maple, Beech and Birch (each wood separately) in March 1921 and 1920, also statement showing the production by grades (of each wood) in March, 1921, and during each year from 1911 to 1920 inclusive.

4. Statement showing comparison for February and March, 1921, of stocks and orders on March 1st and April 1st, and of shipments production and new business booked during the months of February and March, 1921; also a statement comparing first quarter, 1920-1921, showing average stocks on hand, average unfilled orders and total shipments, production and new business booked during that period.

You will note that during the first quarter of 1920 unfilled orders averaged over five times the stocks on hand, but in 1921 this condition has been reversed and the stocks on hand have averaged more than 5½ times the unfilled orders.

The Maple Flooring industry is in a deplorable condition at the present time and over one-third of the mills have been closed down since the first of the year, because of the meager demand for flooring and the very high costs of production compared with values obtainable on the present depressed market. The mills that are running are operating far below normal capacity. Should you desire statistics from us from time to time showing current conditions in our industry, we shall be glad to furnish them for your information.

Then follows a tabulation showing each, the average of stocks on hand, average unfilled orders, from 1912 to 1920 inclusive from the mills reporting, and the quantities in M feet. Then we give a statement of shipments, production, and new business booked, the totals from 1912 to 1920 inclusive, the number of mills reporting each year, the number of thousands of feet, all the way through. Then there is a statement showing stocks on hand, unfilled orders, shipments, production, new business, and the shipments of each wood, etc. for 1920 and 1919, by months, and then the comparative [fol. 310] stock conditions for the year. Then surpluses in Maple flooring stocks; production by grades. Then Maple, Beech and Birch

flooring on hand April 1, 1921. Then a quarterly report showing the data given, referred to in the statement.

I think we have continued to give all the statistical data above mentioned to the Federal Reserve Bank every month. At times we have given them more than they originally requested. We have given them stock conditions and barometer of Maple, Beech and Birch flooring on hand; maple flooring on hand, and other reports I think we sent them. I think we have sent them almost a complete set of all reports and are doing so now. I believe we also send them the weekly report of sales.

"Q. With what other public body did you take up the question of filing or submitting the data prepared by the Association?"

A. I was in Washington in April of 1922 soon after the organization of this new Association to attend that Trade Conference which was held there under the auspices of Secretary Hoover of the Department of Commerce, and while I was there I called upon the Bureau of the Census to talk with them in regard to what statistical data they would like to have to use in their Survey of Current Business. So, I took the complete set of all the statistical reports of all kinds, including prices, etc., to show to them, so they could select which ones they wished to receive to use in their statistical work. I called upon a Mr. Lane there who was an Assistant to Dr. Serviss and I think now, he is in charge of this work, Dr. Serviss I think having gone to some other department of the Government, and he indicated what he would like to have and what he would not like to have."

[fol. 311] "Q. Will you tell us what part of the statistical data that part of the government indicated they would accept for their uses?"

A. Well, on the barometer sheet they said they wanted only statistics which would reflect basic conditions in the industry; they did not want a lot of detail because it would be too voluminous; so we indicated on the barometer sheet he would like to have stocks on hand, the unfilled orders, the shipments, the production, and the new orders; also the average price realized f. o. b. cars at Flooring mill plants on 13/16 x 2 1/4" Clear, No. 1, and Factory Maple Flooring. So he crossed off from here what he did not want and left the balance on this sheet. Then he also requested us to give him old statistics dating back, so they might form an index number, so they could keep track of it in the future. So we gave him what we call the barometer for the year 1921. Then we gave him a statement of M. F. M. A. stocks 1921-1920 compared, showing the totals for those two years, which he said he would like to have. Then I have a notation here "no reports like this desired by Department of Commerce, Census Bureau; talked with Mr. Lane, Assistant to Dr. Serviss, April 13, 1922", initialed by me, and we put a blue circle on every report that we submitted that he did not want to have. He did not want individual statistics as to Maple, Beech and Birch flooring on hand, as to the individual membership.

He did not care for the miscellaneous reports showing production by grades and shipments by weights, etc.

He did not care for the average prices realized during the pre-

ceding month. He said there seemed to be a question of policy involved between the Department of Justice and the Department of Commerce regarding the collection of these statistics, in a letter—he doesn't say so though he said it seemed to be a question of [fol. 312] policy that was involved; the rest is my own inference.

The Maple, Beech and Birch flooring on hand February 28th, 1922, tabulated by grades, faces, etc., he did not care for that; he simply wanted the total.

The same applies to Maple Flooring on hand by grades, faces and thickness.

The same applies to the Birch flooring and the Beech flooring.

The surpluses of Maple Flooring stocks on hand—this report is dated February 28th, 1922—he did not care for that.

The Maple Flooring surpluses in thousandths of feet, he did not want that.

The record of receipts, the February 1922 report showing when the members made a report, he did not want that.

The comparative stock conditions for the years 1921 and 1920, showing the percentage sold of each item on hand during the year by month; he did not care for that.

Individual statistics for the years 1921 and 1920, showing stocks on hand and the identifying numbers of the members of the Association, and where the statistics came from, and so forth; he did not care for that.

Trend of current net values, based on average of Michigan and Wisconsin mills for years 1921, 1920 and 1919, and the contrast below of the current net value and of the stock conditions, he did not care for that.

Surpluses in maple flooring stocks, production by grades by years, he did not care for that.

Record of completed transactions, being the reports of sales made during the week ending May 1, 1922, in the form in which it was [fol. 313] made at that time—a copy of it is here—he said he did not care for that, because it would be too voluminous, people would not have time to read it in his department, to say nothing of using it.

Since then we have compiled a vast amount of statistical data for the Department of Commerce, and we have spent hours, days and weeks compiling these statistics in order to enable them to arrive at an index number to use in their Survey of Current Business. We have taken the statistics, going way back for a long period of time.

Then they wanted us, if we could, to give statistics of identical members for a certain period of time. So we compiled that, going back as far as we could, in order to enable them to obtain a relative basis to use.

Then we have also, at their request, gathered considerable data regarding the normal capacity of the flooring plants in the Association, which we will probably bring in later on.

Then since then we have sent them all the statistical data they are willing to receive. As a matter of fact, we sent them more than

they were willing to receive; they didn't want it and they simply threw it away.

We have here the Survey of Current Business for the month of August, 1922, in which it makes references to our data. Of course we take this magazine regularly, and we have a great many of them in the office, and there have been a good many comments regarding maple flooring data and so forth. Sometimes we have made notations on four or five or six pages where maple flooring is referred to. This one I have is for August 1922, and refers to it on pages 1582 and 1583.

Q. That is what was used by the Department in making its surveys of business?

[fol. 314] A. Here, for example, is a whole column headed, "Maple Flooring for 1919, monthly average," of all these different fundamental factors, they take the 1920 average, the 1921 monthly average; then they give the production and the shipments and the stock on hand and the orders booked and unfilled, orders at the end of the month beginning with May, 1920, which was about as far back as we could go to get an identical group of members or manufacturers whose statistics were continuous during that time; that is, from May, 1920, to December, 1921, and January to June, 1922. They give us an index number taking the monthly as 100 per cent. That appears on page 82. Now the statistics we give them from time to time are published in these issues of Current Business, and we can obtain them.

Q. Is that a monthly publication?

A. Yes, published every month; it is called Survey of Current Business, and published by the Department of Commerce, Bureau of the Census.

Q. What use, do you know, has the Federal Reserve Bank made of your data? Have they made a survey of business conditions?

A. I don't know whether they have or not; we do not receive the publications of the Federal Reserve Bank. They promised to send them to us if we wanted them, but I think we never followed them up. We send them the statistical data every month, however, quite complete.

Q. Do you know the general scope of the distribution of this Survey of Current Business which is published by the Bureau of the Census—compiled by the Bureau of the Census?

A. I have no doubt but it has a nation-wide circulation; I imagine all business houses and commercial organizations and so forth, must subscribe to it. However, I couldn't tell you that. It is recognized as an authority on business conditions, and as I understand it, the [fol. 315] statistics are very highly regarded.

Q. Now in addition to the Bureau of the Census and the Federal Reserve Bank to what other source has your data been going and since what time?

A. After we returned from Washington we took this matter up at the meeting of the Association, and they instructed me to follow the advice of our attorneys and give to the lumber trade papers such data as might be useful to the public and might be desired by the

public, and we took as the foundation of the data which we gave to the lumber trade papers, the statistical data which the Department of Commerce, Bureau of the Census, elected to use, feeling that inasmuch as the Department of Commerce, Bureau of the Census, is functioning for the benefit of the public, that whatever it thought was adequate for the public to have, should be satisfactory; so we simply followed that outline, except that we have gone further and we give them, the lumber trade papers, reports of average prices realized each week, beginning on May 18th, 1922. We wrote a letter to the various lumber trade papers, and here is a sample of the letter:

"American Lumberman, Manhattan Building, Chicago, Illinois

The Maple Flooring Manufacturers Association gathers the following statistics relating to basic conditions in the industry:

1. Total stocks on hand at the end of each month.
2. Total unfilled orders at the end of each month.
3. Total shipments during each month.
4. Total production during each month.
5. Total new orders booked during each month.
6. Average prices realized F. O. B. cars at Michigan and Wisconsin flooring mills during each month for 13-16 x 2 1/4" Face Clear [fol. 316] No. 1, and Factory Maple Flooring.

These statistics are portrayed in the form of a barometer, and are filed with the Department of Commerce, Bureau of the Census, Washington, D. C. and believing that you may wish to publish them for the information of the public, we shall be glad to send them to you regularly about the middle of the month. We are enclosing the barometer for the month of April, 1922. Yours very truly, Maple Flooring Manufacturers Association, George W. Keehn, Secretary."

Q. To what other trade papers did you send that communication?

A. Here is a mailing list of this statistical data.

Q. Yes, read it.

"Department of Commerce, Bureau of the Census, Washington, D. C. Federal Reserve Bank of Chicago. Statistical Department, Chicago. American Lumberman, Manhattan Building, Chicago.

They recently requested data regarding the Maple Flooring Industry and we sent it to them. They said they would like to have the information a little in advance of when they might need it for publishing in the lumber trade papers, as a survey of current business. We mail it out, however, all at the same time to everybody.

"'Lumber', St. Louis, Missouri;
Chicago Journal of Commerce, Chicago;
Hardwood Record, Chicago;
Lumber World Review, Chicago;
Lumber and Veneer Consumer, Chicago;
Southern Lumberman, Nashville, Tenn.;

National Lumber Manufacturers Association, Washington;
S. W. Strauss and Company, Chicago."

We also send them weekly reports in this form: Maple Flooring Manufacturers Association. Maple Flooring Wholesale prices. Sales [fol. 317] by Michigan-Wisconsin Flooring Mills 13/16 x 2 1/4 maple flooring, average values F. O. B. cars flooring mills during the week ended so and so.

We give clear, Number 1 and Factory, and that is published in the lumber trade papers, the Chicago Journal of Commerce and others. We also send them from time to time quarterly reports showing statistical conditions, and semi-annual reports.

We send only a summary of the weekly reports to the publications above mentioned. We have never refused to furnish any data requested by the trade papers or any one else. The trade papers published the statistics we sent them. The trade papers above mentioned are generally recognized trade publications, having a very wide circulation, and I presume they are taken by every one in the lumber trade and by buyers of lumber products. About 90 or 95 per cent of all the flooring produced by members of the Association is sold through retail and wholesale lumber dealers who take the trade journals above mentioned. I have a list of the data that have been given to the Department of Justice and the Federal Trade Commission at various times.

(Said document marked dfts'. Ex. J. and received in evidence.)

The Association has an Advertising Committee, Committee on Costs Surveys, Grades Committee, Committee on Canadian Flooring Tariff, and then in 1922, soon after I returned from the Trade Association conference at Washington, the Statistical Committee was appointed to cooperate with the Department of Commerce with reference to any statistics or any work that the Department of Commerce might wish to take up with the industry.

Q. I mean those committees other than the one on cost surveys, their duties are clearly enough indicated.

A. Yes.

Q. The grading committee relating to grades; the advertising committee, relating to advertising; the statistical committee, relating to the statistics and their distribution, other than those committees, coming to the committee on cost surveys, I would like to know exactly what that committee does. I mean, how does it function under the present articles of association.

[fol. 318] A. Well the committee functions just exactly in accordance with Article 14 of the Articles of Association. It is very clearly set forth and defined in there how these surveys of costs are to be made and their work is done in accordance with that article.

The members of the Committee on Cost Surveys ascertained from all sources available the market value of rough maple flooring lumber as established from time to time by sales on the open market. There are 8 members on the Committee on Cost Surveys, but they are very seldom all there. They have not held separate meetings,

except only once. They generally come to the Congress Hotel about the time the association meetings are held and they get their information as best they can.

The Court: Of course, we understand how they get their information as to market prices and the value of maple lumber. Where do they get their data as to other matters that go in to make up the average cost?

A. The data submitted to the members of this committee regarding manufacturing and marketing costs is compiled by me from information which I receive from members of the association and the average is given to the Committee on Cost Surveys regarding the average cost of manufacturing and marketing flooring during a given quarter.

The Court: What services do these members of this committee perform separately and distinctly from the services that you perform?

A. Why, they advise me as to what the average cost is of the rough maple flooring lumber delivered f. o. b. cars at the flooring plants, based upon purchases which they have themselves made in the open market or which other members of the Association inform them that they have made on the open market, or of sales which they may learn of through the lumber trade papers or anyone else who may have sold lumber, rough maple lumber, or purchased rough maple lumber. That is all they do.

The Court: So that when you get to the bottom of this thing they furnish you some additional information.

A. Regarding the cost.

The Court: Derived from outside sources and you combine that information with the information which you have received from individual members of this association in making your reports.

A. Yes, sir.

That is the sole function of this committee and it does not go beyond that scope. It does not analyze or interpret its findings.

Q. Now counsel in questioning you with reference to this present committee, referred in his question to this being the successor of the market conditions committee. Does this Committee on Cost [fol. 319] Surveys make any forecast reports or findings as to market conditions, either present or future?

A. None whatever.

Q. Other of course than the market prices of rough lumber that we have gone into. Or does it make any forecasts of any character?

A. This Committee does not in any way discuss the prices of flooring or make any forecast in regard to the price of flooring. They do discuss the price of rough maple lumber, the cost of manufacturing and marketing flooring and they might give some information regarding what information they have as to the available supply of rough maple lumber out of which they manufacture maple flooring.

Q. Since January 1, 1922, has this committee or any other committee of the Association issued the bulletins or letters, some of which have been introduced here for earlier years, as giving general or discussing general market conditions and making observations as to the future or immediate future of the industry?

A. No, sir.

Q. Have any such reports been issued from any source in the Association since January 1922?

A. No, not from the Association offices, or from anyone connected with it.

Q. Or from anyone connected with the Association?

A. No, sir.

Q. So far as it has come to your knowledge.

A. So far as I know about.

[fol. 320] There is not now and has never been under the present articles of association or since January, 1922, any registration of special representatives or brokers. There is not now and has never been since January 1st, 1922, any exchange of quotations among members of the present Association. This Association has never done anything of that kind and this is not a part of its work. I understand that different members of the Association issue their price lists from time to time. None of those price lists are ever filed with the Association. Neither do the members of the Association exchange price lists so far as I know. They do not do so through the Association. The Market Conditions Committee went out of existence in the summer or fall of 1921. That committee and its operations did not extend into the new association.

Q. Now referring to the earlier correspondence, reports and I think it is all in the correspondence perhaps, reference is made from time to time to prices of some particular grade of maple flooring being a concession of so many dollars from list.

A. Yes.

Q. What was that reference to?

A. In publishing these tables of values based upon average cost, they were worked out on the basis of test runs, and the cost of manufacturing and marketing flooring, and in some cases this proposed profits of ten percent on sales was included to illustrate what prices should be realized for flooring if it was sold based upon those fundamental elements, and then in order to avoid reprinting these tables of values, frequently, the differences were covered by these concession sheets or differential sheets.

Q. Now those concessions sheets or differential sheets are no longer and have not since 1922, have they, January, 1922, been issued?

A. No, they are not issued at all. Nothing has been issued different from what has been in the rate book and these average cost charts and so forth.

Q. And that practice therefore of issuing a sheet or statement showing concessions from the so-called lists does not obtain under the present Association?

A. Not at all.

[fol. 321] No information received by me from members except that disclosed in the regular statistical reports is divulged by me to other members. There is a membership fee fund of \$200 per matcher. That is in the nature of a guaranty fund to insure payment by members of their obligations to the Association, if any-

thing should happen. I think that fund at the present time amounts to \$17,000 *or* \$18,000. About 90 per cent of the fund is invested in Liberty Bonds. The total yearly expenditures of the Association do not amount to more than a quarter of one per cent or three-tenths of one per cent of the value of the flooring sold by the members.

In a vast majority of cases lumber products and maple flooring are sold at delivered prices, because the buyer insists upon knowing the cost of the flooring, we will say in this instance, delivered at destination. Therefore the flooring manufacturers will quote him the delivered price on the flooring, and when this purchaser receives the flooring he deducts from the invoice for the flooring which is sold to him at the delivered price, the actual freight paid from the point of origin to destination of the shipment. Then he remits the balance to the manufacturer. In other words, if a lumber dealer at Nashville, Tennessee, buys a carload of flooring and it is shipped [fol. 322] from Saginaw, Michigan, that lumber dealer deducts the actual freight that he pays to the railroad company on this car of flooring from Saginaw, Michigan, to Nashville, Tennessee, and remits the balance to the shipper. I think that about 90 or 95 per cent of the flooring produced is sold at delivered prices. The actual freight is paid by the customer from points of origin to point of destination, the customer deducting the freight paid by him from the invoice price of the flooring.

Q. In examining you with reference to the minutes or to the meetings of the Association, what was done at those meetings. Mr. Fowler intimated that perhaps the members of the Association met together, and before organizing into the meeting, discussed the prices of lumber, and then formally organized and discussed purely routine matters.

A. Well the members never did anything of that kind.

Q. Has any such subterfuge ever been adopted in this Association?

A. I was about to say that that would be simply a subterfuge and we have never done anything of that kind.

Q. Have you, Mr. Keehn, since January 1, 1922, since the organization of this Association, observed the injunction which you said Mr. Newman gave to you and the members of the Association, that you are not as an Association meeting, or when they met together, call them association meetings, you are not to discuss the price of maple flooring, or prices to be asked or charged for maple flooring?

A. We have never discussed the prices to be charged or asked for maple flooring. We of course have the weekly reports of sales and monthly report, and which are past transactions, and sometimes as those reports were distributed at the meeting they looked them over.

Referring to letters which have been introduced by the Government, some of them dated in 1921 and three in 1922, said letters having been exchanged between manufacturers who were members of the Association and outsiders, wherein northern group or north-

ern mills are mentioned, I can state that the activities of the so-called northern group or northern mills were never brought to my attention as secretary of the Association. I had nothing whatever to do with such matters and I had no personal knowledge of them. [fol. 323] Q. And was the activity of that so-called Northern Group ever authorized, approved or countenanced by the Association?

A. Never.

Q. Or by you as Secretary?

A. The Association had no knowledge of it as an Association.

Q. And none of the matters which are referred to in these letters were brought to the attention of the Association or your attention?

A. They were never mentioned or discussed at any meeting of the Association and were never mentioned or discussed with any, by any members of this so-called group. As a matter of fact I was out of the court room when the letters were read and I don't know who the so-called group is, you know, who constitutes the group.

Q. Did this association, the Maple Flooring Association, ever hold meetings at Marquette or Milwaukee or Escanaba or any other point than Chicago?

A. Never; the only place of meeting of our Association has been Chicago, except I think about ten years ago we had one or two meetings, mid-summer meetings, at Mackinac Island.

Q. Did you ever have a meeting at Marinette, Wisconsin?

A. Never.

Q. Does the Association, the present Association, or have they met, any of the past associations, have regional meetings or sectional meetings of the Association?

A. No, that has never been done.

Q. At any time?

A. At any time, either past or present.

Q. Did you ever hear of a Marinette basis? Or a Marinette arrangement?

A. Never; no, sir.

Q. Now there is also included, Mr. Keehn, in this group of correspondence, correspondence I think passing between four or five mills that seem to be the manufacturers of one and one-sixteenth inch flooring. Did the activities of that particular group of flooring manufacturers ever come to your attention?

A. No sir. They are never discussed at any meetings of the association, I might say Mr. Johnson that on March 26, 1923, I received from J. W. Wells Lumber Company a copy of the correspondence which the Department of Justice got out of their files, so I must admit it has come to my attention since 1923.

Q. That is since the preparation for this trial by the Government and suit was started.

[fol. 324] A. Yes, sir.

Q. But understand, my question refers to any time prior to the time that this suit was started.

A. On both of those cases, Mr. Johnston, I have no recollection or knowledge of any of those things having been mentioned to me, and they never were discussed in any Association meetings.

Q. Did the Association, or you as Secretary, or the directors or trustees of the Association, ever authorize any activities on behalf of this small group manufacturing the one and one-sixteenth inch flooring?

A. No, sir.

Q. Or countenance any such activities by any separate group within the Association?

A. No, sir.

Q. And the activities of such a group was never brought to the attention of you or to the attention of the association until during the course of the preparation of this trial?

A. Yes. The Association, Mr. Johnston, as an Association, never had anything to do with those matters, and I as Secretary of the Association never had anything to do with them.

Q. Mr. Keehn, there is mentioned in some of these letters passing between separate manufacturers that they have made a price which they have guaranteed against decline for a certain period. Is there any such arrangement as a guaranty against decline provided for by your Association or included in your activities in any way?

A. None whatever.

Q. If the manufacturers make such arrangement in quoting to customers, that is something entirely individual with the manufacturer?

A. It is an individual policy or whatever he chooses to do.

Q. It is something which is not considered or acted upon in any way by the Association.

A. Not by the Association.

[fol. 325] In some of the letters introduced by the Government reference is made to prices for extra shorts and the movement of that product. Neither I as secretary of the Association nor the Association ever knew of any such matters. We have no objection to eliminating from our reports all reference to the particular members failing to report and we will eliminate such references hereafter. We will omit the numbers of members who do not report, but simply state that two or three or four members have not reported without giving their numbers. We will also omit the surplus stock statement and data of reports received. With respect to the average cost as disclosed by test runs made by different members, only the total is shown. The individual figures of the different members are not. In other words only the average is shown and not the individual results of each member.

(Direct examination by Mr. Fowler:)

Q. I don't think I understand exactly when this reporting system was begun and how it developed.

When did you first begin requiring the members to make reports of their daily sales to the Association?

A. I don't recall that either, Judge Fowler, it may have been some time in 1920, but I would not be positive about that.

Q. Before that time they had not been making those daily.

A. The weekly reports of sales?

Q. I mean weekly reports of sales.

A. The weekly reports of sales. The form of the Association work changed a good deal during all these years, and I can't tell when those weekly reports were started and when stopped.

Q. Did you secure an opinion from your attorney with reference to the legality of the minimum price plan?

A. I think we did but not in writing.

Q. They advised that it was legal?

A. They advised us to submit it to the Federal Trade Commission and the Department of Justice, which we did.

[fol. 326] Q. Did they advise you that it was legal?

A. It was their opinion, as I recollect it now, that it was not an unreasonable restraint of trade.

Q. And you also secured their opinion with reference to the minimum price basis.

A. Yes, sir.

Q. And they advised you that that was not illegal.

A. In all these transactions, Mr. Fowler, we have consulted our attorneys from time to time, and we tried to be guided by their opinion, and I presume their opinion has changed as the Sherman Anti-Trust Act has been interpreted by decisions of the Supreme Court.

Q. In regard to these differentials which have been eliminated from that rate book, you send out every month a report showing the difference in price or the difference in prices of the several grades of 13-16th 2¼ don't you?

A. Yes, sir; Clear, No. 1, and Factory.

Q. So far as these differentials are concerned, all the member has got to do is just to turn to the report and it is set forth there.

A. He can see what different members are selling these different grades at and the difference the different members make between the prices on different grades.

Q. And that constitutes eighty per cent of the entire business.

A. I imagine it constitutes about 70 per cent of the entire business but that would not make any difference.

Q. I thought you stated it to be about eighty.

A. Not 13-16 x 2¼ face alone.

Q. You think that is 70?

A. Might be 70, or might be 80, Mr. Fowler, I couldn't be certain; it varies according to the class of stock they run into flooring as to what they get out of it.

Q. Again, in regard to those rate books, have you recently issued any rate book, since July 1923?

A. I think we have.

Q. Haven't you just advised your members to tear those up?

A. That is copyrighted you know; no we print new data but don't reprint the rate book; we only reprint the rate book when the freight rate changes, so we send out average cost charts from time to time; we have one going out now dated November 10, 1923.

[fol. 327] Q. You undertook to testify that the members of your Association didn't talk about anything else but just those particular things that are mentioned. How do you know what they talk about?

A. I don't know, I can only tell you what I hear them talk about.

Q. All you mean to say is that you didn't hear them talking about anything.

A. Yes. I can only testify you know as to what they talked about when they had the meetings. I can't tell you what they——

Q. What they talked among themselves, of course you don't have any idea?

A. I can't say unless I was listening.

Q. As a matter of fact you say you didn't know about this correspondence between the Wells Company and these other fellows.

A. I didn't know about it until I told you, this March 26th stuff.

Q. You didn't know correspondence was going on between any members.

A. It does not come to my office.

Q. But these association prices that are mentioned in this Wells correspondence were the prices of your association though, were they not?

A. Well that is a question. I don't know whether they were or not.

Q. Well you didn't know of any other association that the Wells Company belonged to did you?

A. No, no other flooring association, no.

[fol. 328] (Correspondence and other documents marked Gov. Ex. 58, 58-A, 59, 59-A, 60, 60-A to 60-P, 61, 61-A, 62, 62-A to 62-N, 63, 63-A to 63-G, and 64, and received in evidence.)

(Certain specimens of allotment statements prior to 1922 were marked Gov. Ex. 65, 65-A to 65-3L, and received in evidence.)

I think approximately half of the members of the defendant association, possibly a few more, produce their own rough lumber out of which maple flooring is manufactured. I have a complete tabulation of that which our attorneys will introduce as a part of our defense.

(Condensed Financial Statement, July-December, 1922, was identified by the witness, marked Gov. Ex. 66, and received in evidence.)

[fol. 329] DEPOSITION OF WARREN D. BRUSH, TAKEN PURSUANT TO STIPULATION, AT WASHINGTON, D. C., ON NOVEMBER 23, 1923

WARREN D. BRUSH, being duly sworn, testified as follows:

(Direct examination by Mr. Thompson:)

I am a forester. My work is technical work in forest products and my title is Scientific Assistant, Forest Service. My work covers

the uses of various woods in industry and the amounts of different kinds of wood used for different classes of products, as well as statistical and other work relating to uses of woods. I have been in the forest service for 15 years. I have made a study of wood using industries in the State of Michigan. That was in 1920. That study was to collect statistics for uses of woods in the states for all different purposes, by kinds and by classes of uses. That study included the uses of the maple lumber. That study is the basis of an official publication now in the course of preparation and will be issued later. In order to obtain the statistics to be used in said report, schedules were sent out to all firms in the state manufacturing wooden products, on which the amounts of different kinds of lumber used were to be filled in. Where the information was incomplete, it was filled out by a personal visit. I think that the figures obtained are complete and just as accurate as it is possible to make them.

From the study that I made I have drawn off certain figures as to the uses of maple lumber by factories in the State of Michigan. [fol. 330] "Q. What was the total amount of maple lumber used by factories in the State of Michigan during the year 1920?"

Mr. Johnston: Let me enter an objection on behalf of the defendants to the statistics for the year 1920, as being statistics antedating the existence of the Association sought to be dissolved, which was organized on January 1, 1922. And by agreement may this objection apply to other questions relating to that, without repeating and unnecessarily clogging up the record?

Mr. Thompson: Yes, I understand that that objection applies to all.

A. The total amount of maple lumber used by factories in Michigan in 1920, under these statistics, is 286,363,000 board feet."

Of the amount above given, there were 232,425,000 board feet grown in Michigan. There were 178,477,000 board feet of maple lumber used in Michigan in planing mill products. Maple flooring is included in the classification of planing mill products:

The statistics of the amount of maple lumber used in other industries in the State of Michigan are as follows:

Motor vehicles, 63,339,000; furniture, including chairs—chairs are given in another table, but I can combine the two here—11,966,000 board feet; sash, doors and blinds,—I put that in as being somewhat similar to the planing mill products, it is a small amount—133,000 board feet, musical instruments, 2,486,000 board feet; handles, 5,075,000 board feet; sporting and athletic goods, 2,081,000 [fol. 331] board feet; agricultural implements, 1,324,000 board feet; carriages and wagons, 5,015,000 board feet; professional and scientific instruments, 1,900,000 board feet; boxes and crates, 9,795,000 board feet. And there are quite a number of other classes which I didn't include, of small amounts less than a million board feet. There would be quite a number of them and I didn't include those statistics.

The figures above given include all the principal classes of uses to which maple lumber is put. It is very difficult to determine the

percentage of maple lumber going into planing mill products that goes into maple flooring. It would be a very large amount, probably something like 90 or 95%, which would go into flooring. In my study figures were not obtained for the amount of maple lumber going into flooring alone. Flooring was reported on and was included with other items of other planing mill products. From my study and familiarity with the industry and the uses of lumber, I am satisfied that the estimate of 90 or 95% is reasonably accurate. I would say that it is a conservative estimate.

From my work in the forest service, I am familiar with lumber conditions throughout the country only in a general way. Of course, I am familiar with the general conditions throughout the country as a whole and throughout certain large sections. The Lake States are one of the great centers of maple lumber production, and to a minor extent the southern hardwood region, and also [fol. 332] New England. That would be shown by our lumber production statistics, I think.

There are several different kinds of maple. There are two commercial kinds, hard maple and soft maple. From a commercial standpoint, the hard maple is, as the name implies, very hard and will stand a great deal of wear. The soft maple is softer and is not so durable under conditions involving considerable wear. Hard maple is very largely used in the manufacture of maple flooring. Soft maple would by no means make so satisfactory a flooring as the hard maple. Flooring made of soft maple lumber would not be able to compete successfully with flooring made of hard maple. Hard and soft maple grow together more or less, but as a general rule I would say that the two together would not grow in commercial stands in large quantities. I am not altogether qualified to pass upon this matter, but my opinion is as I have stated. The Lake States contain the principal hard maple stands in this country, namely Michigan, and to a less extent probably Wisconsin.

I don't know whether I could answer your question of which kind of maple predominates in the other maple producing centers I have mentioned. I know that the soft maple is very important in New England, probably more important than the hard maple. As to other sections, I am not familiar enough with them to make any definite statement.

(Cross-examination by Mr. Johnston:)

I made the study of the lumber industry in the State of Michigan myself. I went to Michigan for that purpose. I did the making [fol. 333] out of the schedules in Washington, but there was considerable field or follow-up work done in Michigan. The schedules or questionnaires were sent to all manufacturers of wood products in the State of Michigan. We got our lists of manufacturers from a great many sources; we got them from publications that we had put out; we got them from various directories put out by lumber associations, and all these lists were carefully checked over. Publications containing lists of persons engaged in all forms of wood-

working are the Blue Book, the National Lumber Manufacturers' Association and the Red Book. Those lists were very carefully checked up in every town. If no answer was received to the inquiry that we sent out, we made a personal visit and ultimately got data from all persons to whom inquiries were sent out, provided they were still in business. This questionnaire, among other things, covered the use to which the particular industry was putting lumber. There was not in the questionnaire a special inquiry as to the manufacture of flooring. It was an inquiry as to what use they made of each wood. In the questionnaire there was a space for the products manufactured and also a space for the species and each firm put down the product that was manufactured opposite each species of wood used; also the quantity of each species of the wood which was used for any particular purpose.

From the information received from all sources, we made up a schedule classifying various uses in accordance with said information. We did not make up a separate schedule as to flooring. I think we could have done this, but we did not feel it necessary to do so. Under the general heading, "planing mill products," we included house finish—exterior finish such as weather-boarding—interior finish such as base boards—and all such products that come out of the planing mill and are not reworked into various other products.

"Q. Now, have you made any computation, by going through your figures, to determine the proportion of the class, which you have designated "planing mill products," which is represented by maple flooring, or is that just an estimate that you made?"

A. That is an estimate.

Q. You have not taken the figures and figured it out for any one mill or any group of mills?

A. No sir.

Michigan mills make quite a great deal of interior finish, but I am quite sure that this is not made of maple. The study was completed, or all office work was completed, in 1922. I have gone over the figures since that time, including the figures relating to maple lumber, but I have not made any special tabulation of the maple flooring figures. In getting out the questionnaire, we did not make a classification of the kinds of maple flooring that were made by the various manufacturers with respect to grade. My study also included beech and birch lumber. Beech and birch are classified under planing mill products and other heads.

Q. And would you say that the same estimate which you have made as to maple flooring—namely, that about 90% of the lumber [fol. 335] which you have classified as used for planing mill products was for maple flooring—would apply to beech and birch?

A. No sir, I would not.

Q. Would you say that a larger percentage of beech and birch was used for other planing mill products than for flooring?

A. Yes, sir.

Q. Your study did not extend into the State of Wisconsin, did it?

A. No, that study did not, except that it applied to woods, maple and other species, which were grown in Wisconsin and manufactured in Michigan; that is the only extent.

Q. Yes, but that represented only a small part?

A. Yes sir.

Q. Did your study indicate where the lumber came from that was not grown in the State of Michigan?

A. No.

Q. So that you could not say that all of that that came into the State of Michigan was grown in Wisconsin?

A. No, but just from general knowledge I would say that a very large part of it was grown in Wisconsin.

Q. Do you know anything about the maple lumber industry in Canada?

A. No, I do not.

Q. Are you familiar with the fact that there is produced in Canada a very large quantity of maple lumber?

A. I know that they produce a considerable amount; I don't know how much.

[fol. 336] Q. And that they also produce from that maple lumber, maple flooring?

A. I know they do.

Q. Which comes into this country in considerable quantities?

A. Yes, I know they do produce considerable amounts.

Q. Now, the maple lumber which is produced in the New England States, that is the hard maple lumber, is for commercial purposes and of the same quality as the hard maple lumber produced in Michigan and Wisconsin, is it not?

A. Yes, what would be produced in New England would be for the same purposes.

Q. Do you know how many mills there are in the State of Vermont and New Hampshire which are producing maple flooring?

A. No sir, I do not.

Q. Hard maple flooring, of course, I mean.

A. No, I do not.

Q. There is no such thing as soft maple flooring, is there?

A. I don't think there is, no; it would be very inferior.

Q. Now, there is produced, is there not, a considerable amount of maple flooring in West Virginia?

A. Yes.

Q. That is hard maple, and it would be produced of identically the same quality as the Michigan and Wisconsin maple?

A. Yes."

[fol. 337] DEPOSITION OF FRANKLIN H. SMITH, TAKEN PURSUANT TO STIPULATION, AT WASHINGTON, D. C., ON NOVEMBER 23, 1923.

FRANKLIN H. SMITH, being duly sworn, testified as follows:

(Direct examination by Mr. Thompson:)

I am in charge of the Lumber Commodity Division of the United States Tariff Commission, and have held that position just a little over a year. Immediately prior to that I was Assistant Secretary and Statistician for the National Lumber Manufacturers Association. I held that position for about eighteen months. I went with the Association in March of 1920. I was with the United States Forest Service from, I think, March, 1908 until March, 1920, with the exception of about eighteen months, when I was with the Department of Commerce. When I was with the Forest Service, my title was that of Statistician and had to do with the compilation of statistics among the wood using industries, also of forest products, and largely with the utilization of wood in its various forms, such as studies of wood using industries from various states.

As Assistant to the Secretary of the National Lumber Manufacturers Association I had the running of the office, what you might call an executive position. In addition to that, there was a bit of economic and statistical work done. In its statistical work the Association compiled and published weekly and monthly statistics of the production of lumber throughout the United States as reported by member mills of various Associations.

[fol. 338] The National Lumber Manufacturers Association is composed of associations, or what we term the "regional associations." There were no individual memberships.

"Q. Will you please pick out the several regional associations and in connection with each give us its name and the territory it covers and the kinds of woods which are produced in that territory and which come under the statistics of that regional association?"

A. Without regard to their relative importance or relative quantity production, or any other arrangement except that that comes to me, would be the Southern Pine Association, with headquarters at New Orleans, the members of which produce almost exclusively southern pine, which embraces both long leaf and short leaf pine; that association issues and sends to the National Association weekly production figures for its members, together with stocks and unfilled orders. Did you wish me to state the approximate territory covered by each association?

Q. Yes.

A. The Southern Pine Association members are located, of course, in the southern pine producing belt, which is Texas, Louisiana, Mississippi, Alabama, Florida, and I think they have a few members in Georgia since they maintain a branch office at Jacksonville. The next association I think of is Georgia-Florida Sawmill Association, with headquarters at Jacksonville, whose members also produce long

leaf pine principally and who report the same character of statistics to the National Association; the membership is confined [fol. 339] to Georgia and Florida, and possibly one or two members in Alabama and possibly one or two in South Carolina. The next association is the North Carolina Pine Association, at Norfolk, Virginia, whose members produce loblolly or short leaf pine in North and South Carolina and Georgia. Getting further west, we find the Northern Pine Manufacturers Association with headquarters at Minneapolis, embracing eight or ten white pine producers in Minnesota and the Northern Peninsula of Michigan. Also the Northern Hemlock and Hardwood Manufacturers Association, at Oshkosh, Wisconsin, whose members produce in the way of soft woods hemlock principally, a very small amount of white pine and quite a large proportion of the hard woods of that region; the membership is found in both Wisconsin and Michigan. There is also the Michigan Hardwood Manufacturers Association, at Cadillac, Michigan, whose members produce hemlock and hardwoods; there is a bit of overlapping in the membership as between the Northern Hemlock Association and the Michigan Association. There is some question in my mind as to whether you would have me testify to another association which has come in to the National Association since my leaving there.

Q. No, I think we want just those that you were directly connected with in your position with the National Association.

A. The next association would be that of the Western Pine Manufacturers Association, Portland, Oregon, producing chiefly western yellow pine, the membership of which is found in Oregon, that is western Oregon, and a few members in eastern Oregon, eastern Washington and western Idaho and western Montana. There is also the West Coast Lumbermen's Association whose members are located in [fol. 340] Washington and Oregon, producing chiefly Douglas fir with also spruce, hemlock, cedar. There is also the Redwood Manufacturers Association, whose members produce chiefly redwood in California. There is also the California White and Sugar Pine Association, with headquarters in San Francisco, producing white or sugar pine and western yellow pine, with mills located in California and, I think, one mill in Nevada or close to the border line. Those associations that I have mentioned are the ones which are the organizations affiliated with the National Lumber Manufacturers Association, with the exception of one which has come in since I have been connected there.

Q. Was the Southern Cypress Association affiliated with the National Lumber Manufacturers Association?

A. Yes; I neglected to mention the Southern Cypress Manufacturers Association, of New Orleans, producing cypress in Louisiana and Florida.

Q. Did these other associations which you have mentioned make similar reports to the National Association?

A. One of them does, that is one that I have not—let me see if I understood you correctly.

Q. You testified in reference to the Southern Pine and Georgia-Florida Associations that they made certain reports to the National Association.

A. Yes.

Q. But you did not cover that with reference to the other Associations. Did they all make those reports?

[fol. 341] A. Yes; they all reported to the Association.

Q. Did I understand you to say that there was one other association that was not a member that made reports to the National?

A. Yes.

Q. What was that?

A. That is the Hardwood Manufacturers Institute, of Chicago. There is still one other major association which is not a member of the National Association.

Q. What is the association?

A. That is the National Hardwood Lumber Association, also of Chicago. However, the membership is largely of wholesalers and distributors.

Q. Not all manufacturers?

A. No; it has in its ranks a number of manufacturers, but I think that the bulk of its membership is of distributors.

Q. Do you know what producing territory is covered by the Hardwood Manufacturers Institute?

A. Largely the Mississippi Valley. That, however, would—it includes in its membership mills in Texas, Alabama, Arkansas, Tennessee, Kentucky; getting over into the Appalachian field, West Virginia; and I think there are one or two mills in both Wisconsin and Michigan which are members of that organization.

Q. Which of these regions produce maple lumber?

A. The bulk of the maple is produced in the northern—in the Lake States region; that is the region that is covered by the Michigan Hardwood Manufacturers Association and by the Northern Hemlock and Hardwood Manufacturers Association.

[fol. 342] Q. State specifically what States do you refer to as the "Lake States"?

A. More particularly—well, Michigan and Wisconsin.

Q. In what other regions is maple lumber found?

A. Maple is found in the northeastern States—that is, Maine, New Hampshire, Vermont, New York, Pennsylvania, and is also produced in West Virginia. I might say that it is produced—practically every hard wood producing State cuts some, since it is a well distributed species.

Q. Is there more than one kind of maple?

A. There are both the hard and so-called soft maple.

Q. Are those two kinds found together in the same stands?

A. Only to a slight extent.

Q. In what regions is hard maple predominantly found?

A. Largely in the Lake States, in Michigan and Wisconsin.

Q. From your experience and studies in the Forest Service and while with the National Lumber Manufacturers Association, have

you any way of estimating the approximate percentage of the hard and soft maple found in Michigan and Wisconsin?

Mr. Johnston: I object to an estimate not based upon actual figures but merely upon the witness' general knowledge of the subject, as being incompetent, not the best evidence.

Mr. Thompson: I will pass that question for a few minutes.

Q. In your work in the Forest Service, were you connected with the compilation of figures of the production of lumber in various sections of the country?

A. Yes.

Q. And in that connection did you become familiar with the production and with the stands of timber in the various sections?

[fol. 343] A. Yes.

Q. In reporting the stands of maple and production of maple lumber, is any differentiation made between the hard and the soft maple?

A. Not in the production figures, no.

Q. But in the figures of standing timber?

A. Yes, there is a distinction made.

Q. Where are those figures recorded?

A. The figures on production are covered by the annual publications of the Forest Service and also of the Census Bureau continuously for each year since 1904. The stands figures—there has never been any one publication in which you can find the data to which you refer. There are various publications in which the stands of various regions or various States or of various species have been touched upon.

Q. Have you been familiar, during your work in the Forest Service and with the National Lumber Manufacturers Association, with those figures?

A. Very largely with the production figures.

Q. Returning to the first question, did you state whether you had been able to approximately estimate the relative percentages of the hard and soft maple produced in the several regions?

Mr. Johnston: You are asking whether he had been able to estimate?

Mr. Thompson: Yes.

A. Yes, I can approximate—give an approximation of the production.

Q. What would your estimate be of those relative percentages [fol. 344] for the Lake States region?

Mr. Johnston: I renew my objection for the reasons previously stated, and for the additional reason that it appears there are publications from which these figures may be obtained.

A. I should say that in Michigan and Wisconsin, 95% to 98% of the maple cut was hard maple.

Q. And what is your estimate of those relative proportions in the New England States?

Mr. Johnston: I make the same objection.

A. I should think that 75% of the maple cut in the northeastern States was of the soft variety.

Q. And with reference to the other regions in which maple is found?

Mr. Johnston: I make the same objection.

A. In West Virginia and the adjoining States, so far as apply to the Appalachian region, possibly 60% hard and 40% soft.

Q. And are there any other maple producing regions?

A. Maple is produced in the Mississippi Valley, in fact all of the hardwood producing States, but only in minor or limited quantities.

Q. Are you able to make any estimates of the relative proportions of hard and soft maple produced in these other States?

Mr. Johnston: I make the same objection.

A. Of the total quantity?

Q. Yes.

A. I should think it would be about 75% soft and 25% hard.

Q. Have you ever made a study of wood using industries in the State of Wisconsin?

[fol. 345] A. I have.

Q. When was that?

A. In 1909 or 1910.

Q. In that connection, did you make a study of the uses to which maple lumber is put?

A. I did.

Q. What are the principal uses for that lumber?

Mr. Johnston: That is objected to upon the ground that the study antedates the organization and existence of the defendant Maple Flooring Manufacturers Association and, further, it is too remote in point of time to be competent, material or relevant to the issues involved in this case.

A. I should say that the bulk of—or not the bulk, say a large per cent of the maple produced in Michigan and Wisconsin goes into flooring.

Q. What are the other principal uses for that lumber?

Mr. Johnston: It is understood my objection applies to all of this inquiry as to his report in 1909 and 1910?

Mr. Thompson: Yes.

A. It is produced in the usual lumber form, complete lumber form, and used for various purposes, particularly along the lines of laundry machinery, vehicle manufacture, lawn furniture, toys, lasts, furniture, sleighs, various other purposes for which a hard, strong, wear resisting lumber is usable.

Q. In making your study, did you make a separate classification of maple flooring as a user of maple lumber, or did you put that in under planing mill products?

[fol. 346] A. The statistics covered only the utilization of lumber in the planing mills.

Q. Can you state what percentage of the maple lumber used in planing mills is used to produce maple flooring?

Mr. Johnston: That is objected to for the reasons previously stated, and for the further reason that it calls for an estimate or guess, not based upon data presented.

A. Probably 90% of the maple utilized by the planing mills was for the production of flooring.

Q. In your work with the Forest Service and with the National Lumber Manufacturers Association, have you kept closely enough in touch with conditions to be able to state whether that percentage, or approximately that percentage, would still hold good?

A. I think that it would.

Q. You think the same percentage would hold good at the present time?

A. Yes.

Q. Which of the two species of maple that you have mentioned is suited to manufacture maple flooring?

A. Hard maple, because of its hardness of texture and wear resisting qualities.

Q. Is soft maple used, too, for the manufacture of maple flooring at all?

A. If it is so used, it would be used only in isolated cases.

Q. Where is the maple flooring industry in this country centered?

A. In Michigan.

Mr. Thompson: I think that is all.

[fol. 347] Cross-examination.

By Mr. Johnston:

Q. Mr. Smith, you say you are now with the Tariff Commission?

A. Yes, sir, the Tariff Commission.

Q. In charge of the Lumber—

A. Lumber Commodity Division.

Q. Yes. Now, while you were with the National Lumber Manufacturers Association, were all of these various associations which you have named members of that Association?

A. Yes; with that exception which I named at the last; that is, the Hardwood Manufacturers Institute and the National Hardwood Lumber Association.

Q. Are they members now?

A. No; the Hardwood Institute is.

Q. It is a member now?

A. It is a member now.

Q. Now, you named eleven associations, I believe. Does each of those associations furnish to the National Lumber Manufacturers Association weekly a statement of their production?

A. Cut and shipments is what is made.

Q. Cut of lumber and shipments of lumber?

A. And also orders on hand.

Q. Unfilled orders?

A. Unfilled orders.

Q. And stocks on hand?

A. Stocks on hand and stocks—let me correct that; stocks on hand are not furnished with the same regularity nor by all of the associations.

[fol. 348] Q. But they furnish their cut and shipments?

A. Cut and shipments.

Q. And is that done weekly?

A. That is done weekly by telegram.

Q. And are those figures then made available to the members of the National Lumber Manufacturers Association?

A. They are printed and sent to the affiliated associations for distribution to their members, and at the same time given to the press.

Q. How soon after this data is received by the National Lumber Manufacturers Association is it distributed to its members, the affiliated association?

A. In approximately 24 hours.

Q. That is done as soon as it can be complied?

A. As quickly as it can be complied and printed.

Q. And when they receive from member associations the data with respect to stocks on hand or any other data, that is likewise compiled?

A. Yes.

Q. And relayed back to the members for distribution in turn to their membership?

A. Yes.

Q. Has the Maple Flooring Manufacturers Association ever been a member of the National Lumber Manufacturers Association?

A. Not to my knowledge.

Q. Have you from time to time, or did you from time to time, while you were Assistant Secretary of the National Association receive the statistics of the Maple Flooring Manufacturers Association?

[fol. 349] A. No. My thought is that they published no statistics.

Q. Did you ever make inquiry to ascertain whether those statistics were available, or were you interested in obtaining statistics outside of your members' statistics?

A. Not officially.

Q. That is, it was not part of the duties of the National Lumber Manufacturers Association to collect lumber statistics outside of the statistics furnished by its constituent members?

A. No.

Q. Did the information furnished the National Association by its members contain the prices charged for the lumber, or various grades of lumber, which were being sold?

A. No; the National Association has never attempted to compile prices. We did upon one or two special occasions, particularly

during the flurry when lumber reached its peak price, attempt to ascertain prices for comparative purposes, but not as a practice.

Q. The production figures to which you refer are all in terms of board feet?

A. Yes.

Q. And not in terms of dollars and cents?

A. No; board feet.

Q. Now, you say that the maple lumber, that is the hard wood maple, is produced principally in Wisconsin and Michigan?

A. Yes, sir.

Q. There are Government statistics, are there not, which show the annual cut of maple lumber in various sections of the United States?

A. Yes, by States.

Q. By States. And those statistics are prepared by what branch of the Government service?

[fol. 350] A. By the Forest Service for some years and by the Bureau of the Census for other years.

Q. Those statistics are available, are they not?

A. Since 1904 annually.

Q. Yes. And do you know how they are compiled, I mean from what source the information is obtained upon which those departments base their statistics?

A. From the individual mills, by a questionnaire or form.

Q. Yes, which they send out in order to get the information?

A. Which they send out, yes.

Q. Are you familiar with the fact that in addition to the hard maple produced in the northeastern States of Maine, New Hampshire, Vermont, New York and Pennsylvania, a considerable quantity of hard maple is produced in Canada which finds its way, either in the form of rough maple lumber or in the form of finished flooring, maple flooring, into this country?

A. I know very little about the production of Canadian lumber.

Q. In connection with your work with the Tariff Commission, has that subject come to your attention?

A. May I be excused from answering any question which has to do with knowledge acquired by me since my connection with the Tariff Commission?

Q. Well, I only want to know the general fact, whether you know of maple lumber or maple flooring coming into this country from Canada. I think that is a matter of common knowledge to those engaged in the trade.

A. I think it is, but I—

[fol. 351] Q. I am not asking for any specific figures.

A. No, but I would rather now answer the question.

Q. All right. Now, in addition to the hard maple which is produced in the northeastern States, there is considerable hard maple lumber produced in the West Virginia district, is there not?

A. Yes.

Q. The number of mills producing hard maple in that section of the country are on the increase, are they not?

A. I think not.

Q. Is not that a region which is more recently developed?

A. Well, West Virginia is pretty well cut out, both of its spruce and of its hard woods.

Q. Are you aware of the distribution of the flooring mills that are manufacturing maple flooring, hard maple flooring?

A. Only in a general way. I have no—

Q. Do you know, for instance, the number of such flooring mills in the United States?

A. I do not know the number.

Q. Do you know the number in the northeastern States of Maine, New Hampshire and Vermont, particularly?

A. There are no flooring mills in that section.

Q. There are none manufacturing flooring?

A. No. There are some—there is a bit manufactured by the planing mills, but not what we would call a flooring mill plant.

Q. Do you know whether that flooring is sold to a considerable extent, for instance, in the Boston market in competition with flooring from other sections of the country?

A. No.

Q. Has that ever been brought to your attention?

A. I have investigated that, yes.

[fol. 352] Q. Do you know the percentage of flooring from those northeastern States, particularly from New Hampshire and Vermont, that comes into the Boston market in competition with flooring from other sections of the country?

A. I should say it was very small.

Q. Would you say that it was as much as 30% of the flooring that is sold in the Boston market?

A. No.

Q. Now, you made a study of the wood using industries in the State of Wisconsin in 1909 and 1910?

A. 1909 or 1910.

Q. Or 1910?

A. Yes.

Q. That was made for the Forest Service?

A. That was made for the Forest Service.

Q. Is that embodied in a report?

A. Yes.

Q. Is that report printed?

A. Yes.

Q. In what publication?

A. It was a cooperative study carried on with the State of Wisconsin and I think was published by Wisconsin.

Q. This is the publication, which is headed "Study of the Wisconsin Wood Using Industries?"

A. That is the one.

Q. "By Franklin H. Smith?"

A. That is the one.

Q. That publication contains the results of your investigation in 1909 and 1910?

A. It does.

Q. In that publication, do you segregate the flooring industry from the other wood using industries?

A. No.

Q. And do you state in that report the number of board feet used annually of hard maple by the flooring industries of the State of Wisconsin?

[fol. 353] A. Not by the flooring industries, no sir.

Q. Do you give any figures in this study as to the proportion of the planing mill products, so classified, which is taken up by maple flooring—I mean, do you make in this study a division of the various planing mill uses which you have classified under one head, as I understand it, of “planing mills”?

A. No; just the planing mill products were grouped, but it does not show separately what those products were.

Q. That is what I am getting at. Then, as I understand it, you are basing your testimony, that in your opinion 90% of the hard maple, which is grouped under the use designated as “planing mills,” was used for the production of maple flooring, upon your general recollection?

A. Not only upon my general recollection, but also upon my general knowledge of the uses of wood.

Q. Well, what I am getting at is this, Mr. Smith: If in your study in 1909 and 1910 you made no separation of the amount of hard wood used for maple flooring, or maple used for maple flooring, from the amount of hard maple used for other planing mill purposes, how are you able now to state the proportions?

A. Well, knowing the qualities of maple and of other woods, birch and beech and a bit of oak which is found in that region and their adaptability for certain purposes. For instance, the planing mills turn out certain products largely finished for interior finish.

Q. I understand.

A. (Continuing:) The other woods are much better adapted for those purposes than is maple. In other words, we would never [fol. 354] find a wash board of maple; we would find it of the other woods.

Q. Well, I understand your process of reasoning, Mr. Smith, but what I am getting at is: Did you, or anybody else under your direction, ever make any compilation of figures upon which you are basing your testimony?

A. No.

Q. (Continuing:) Of 90%?

A. No.

Q. In other words, it is your general impression from your knowledge of the industries and your knowledge of woods in general?

A. That is correct.

Q. Now, the manufacturers of maple flooring in the State of Wisconsin would naturally keep a pretty accurate record of the amount in board feet of hard maple lumber that they used in a year, would they not?

A. The manufacturers of—

Q. The manufacturers of flooring.

A. Quite, yes.

Q. It is from that source that you originally obtained your information in making your study in 1909 and 1910, from the manufacturers themselves?

A. Yes, sir.

Q. So that the figures which the manufacturers have of their actual use of maple lumber for flooring purposes would be as accurate as it is possible to get at those?

A. I should think so.

Q. Have you continued or brought down to date yourself this study that you made in 1909 and 1910?

A. I did not, no sir.

Q. Has the Forest Service, or any other department of the Government, so far as you know, brought your data of 1910 down to date?

[fol. 355] A. The Forest Service, I understand, has continued its studies of the wood using industries of Wisconsin and also of Michigan and other States.

Q. You, yourself, have not done so?

A. I have not, no sir.

Q. When you say that you think the figures which you found in 1910, or the proportions which you then found to exist, apply today, you are not basing it upon any special study that you have made of the industry?

A. I am not.

Q. (Continuing:) Since 1910?

A. I am not.

Q. For aught you know, there may have been quite a change in the use of maple lumber during that period?

A. Possibly so, due to fluctuation of prices and the introduction of what might be termed more or less substitutes, cheaper woods.

Q. Were you aware of the fact that a very large percentage of maple lumber went into boxes and crates?

A. No.

Q. That was not true when you made your study in 1910?

A. It was not.

Q. And if that is true today, it indicates quite a departure in the use of maple lumber since that time?

A. Yes.

Q. There were uses of maple lumber developed during the war, were there not, with which you may have become familiar in a general way?

A. I don't know whether there were any really new uses; there were increased uses for certain maple products.

Q. That may well have affected the use since the war?

A. Possibly so.

Q. When you say that the center of the maple flooring industry [fol. 356] is in the State of Michigan, you have reference to the

fact that in the State of Michigan there grows a very large body of hard maple timber?

A. Yes.

Q. And there are in that State a considerable number, therefore, of flooring mills?

A. Yes.

Q. (Continuing:) Utilizing that timber?

A. Yes.

Q. As you would naturally expect to be the case?

A. Yes.

Q. Now, with respect to the amount, the proportionate amounts of hard and soft maple which are cut in the various fields, the data compiled by the Forest Service and by the Bureau of the Census should furnish the accurate figures upon that?

A. No, I think not, Mr. Johnston.

Q. Is that because they combine the production of hard and soft in one?

A. It is because of the necessity of combining, because we had no means—I say “we” advisedly. On the individual reports which are returned to the Forest Service, showing the production of maple lumber, the reporting concerns are not asked nor do they distinguish between the various kinds of woods which they cut. Now, that applies to maple and applies to—for instance, take southern pine; now, that covers, as we say, a multitude of sins; it is all yellow pine. In other words, we are unable to distinguish on those individual reports what is hard maple and what is soft maple, so far as the figures are concerned.

Q. Well, in classifying the uses of lumber you can determine by such classification whether the lumber is hard or soft, can you not?

A. Very largely, yes, because of the character of the wood itself. [fol. 357] Q. The character of the wood. Now, upon what data, then, do you base this estimate of 95% of the maple cut in Michigan and Wisconsin being hard maple, on the stands of the respective fields?

A. From the stands of the respective fields and the range of species.

Q. Well, are there figures available as to the number of million feet standing of hard maple and the number of million feet standing of soft maple in these respective fields?

A. No; it is given by the approximate per cent for the several regions.

Q. Where is that given?

A. It is given in several publications.

Q. In any of the Government publications?

A. In the Government publications.

Q. What ones?

A. I am unable to say offhand, Mr. Johnston.

Q. Published by the Forest Service?

A. Published by the Bureau—yes, published by the Forest Service, the old Bureau of Forestry.

Q. You are basing these percentages, then, as I get it, of the

proportionate cuts in the various fields, upon your general knowledge of the proportion of the stands of timber in those various fields?

A. Well, in many instances I handled the individual reports on production in the different fields and frequently it was necessary to hunt up and verify the stands in the different regions; and this general knowledge and this special knowledge, acquired by digging [fol. 358] into the statistics and information available, leads me to make that statement.

Q. In your work, did you ever obtain from the Department of Commerce or from the Federal Trade Commission the data supplied to those two bureaus or departments by the Maple Flooring Manufacturers Associations as to the amounts of maple flooring manufactured by the members of that Association?

A. No sir.

Q. The rough lumber used by them?

A. No sir.

Q. Or the other data which has been from time to time furnished by the Association?

A. I don't recall having seen any data of that character.

Q. Do you recall ever having made inquiry for that data from any source?

A. I said that unofficially I have. I was not reviewing but re-writing a book for publication, "Lumber and its Uses", by R. S. Kellogg, in 1921, I think it was, when I had occasion to ask for certain figures on production of Maple flooring.

Q. That was individual work?

A. That was individual work.

Q. Outside of the Department?

A. That was unofficial and had no connection with my employment by the National Lumber Manufacturers Association.

Q. Or by any Department of the Government?

A. No.

Mr. Johnston: I think that is all.

Redirect examination.

By Mr. Thompson:

Q. Would changes in the respective amounts of maple lumber [fol. 359] going into different uses, that is such as wagons, planing mill products, and so forth, necessarily affect the percentage of such lumber used in planing mill products that goes into maple flooring?

A. I shouldn't think so.

Q. In other words, then, there might be more of the total maple lumber cut which goes into other things than planing mill products now, but that nevertheless the percentage of the planing mill products that goes into maple flooring would be approximately what you testified it was in 1910?

A. I should think that percentage would remain. There may be some changes in the manner of use by different industries, but

not so much in their products. For instance, the automobile industry has taken large quantities of hard woods in recent years for which years ago there was no sale.

Mr. Thompson: That is all.

Recross-examination.

By Mr. Johnston:

Q. Is it not true, Mr. Smith, that it is quite often the case that the price of the rough maple lumber itself is such that it is more profitable for the mill cutting that lumber to sell it in its rough lumber form than it is to process it into flooring or into any other processed form, and that when that situation arises the tendency is to sell the rough lumber without processing it?

A. I don't know as I ever heard of an instance of that kind, Mr. Johnston, because where the price of lumber has advanced the price of everything else has risen and——

Q. Well, have you followed that quite closely, Mr. Smith, by——
[fol. 360] A. I did in 1920.

Q. By following the movement of the price of the rough lumber as compared with the price of the finished product?

A. Yes; and that applies to flooring, because we had the matter up with the Department of Commerce and where they were using a base figure we were getting at both price of lumber and the price of the different products.

Q. Have you ever known a time, in your study of the situation, when the price of flooring was such, as compared with the price of the rough maple lumber, that the processing of the lumber in flooring represented a loss and not a profit—in other words, where there was no demand for the finished product and, the demand being small, the price of the product would necessarily be lower?

A. I have never known that, no sir, Mr. Johnston.

Q. Well, that is a fact, Mr. Smith, if you study the statistics.

Q. Well, it may be; I never knew it.

Mr. Johnston: That is all.

Mr. Thompson: That is all."

Thereupon the Government rested; and in addition to the exhibits introduced by the defendants by agreement of counsel for the Government and the permission of the court during the cross-examination of the Government's witness, George W. Kechn, the defendants introduced the following testimony and evidence, and the following proceedings were had:

[fol. 361]

EVIDENCE OFFERED BY DEFENDANTS

WILLIAM L. SAUNDERS, being duly sworn, testified as follows:

(Direct examination by Mr. Darby:)

I live at Cadillac, Michigan, and am 65 years of age. I have been in the lumber business for 42 years at Cadillac. I am the president and general manager of Cummer-Diggins Company, which was formed in 1907. My Company manufactures all kinds of Michigan hardwood, such as hemlock, basswood, elm, birch, beech, maple, chery, rock and soft elm, and a little ash. Our annual production is about 20,000,000 feet, sixty-five per cent of which will run beech and maple—largely maple. We manufacture maple and beech flooring but no birch. The Cummer-Diggins Company, a corporation, was preceded by a partnership doing business under the firm name and style of Cummer & Diggins. At the present time my Company has three matchers or machines for the manufacture of flooring, with an annual output of about 3½ million feet. We own our own stumpage and have practically a ten years' run, or somewhere around 200,000,000 feet, 65 per cent of which is maple and beech. This timber is located entirely in Wexford County, Michigan. The Cummer-Diggins Company has been a member of various maple flooring manufacturers Associations since 1907.

Q. Who has been the representative of the company attending those meetings since you first joined the first association in 1907, that is, the first association that you joined?

A. I attended those meetings rather regularly for a number of years. The last two or three years our sales manager has attended them much more frequently than myself. That is Mr. Colby.

I have attended occasional meetings though since 1922 up to date.

In the manufacture of maple flooring we do not use all the rough maple lumber that we produce. We grade our rough lumber going to the flooring plant according to the demands of the market from [fol. 362] time to time. We at all times sell the better grades of our lumber, namely, No. 1 Common and better. The higher grades that we sell are known as No. 1 Common, Selects and Firsts and Seconds. Firsts and Seconds are handled together. If in our sheds we have a large accumulation of factory flooring we withhold from the flooring mill a large percentage of the lower grade rough maple lumber. On the other hand, if there is a big demand for factory flooring we work up the lower grades of lumber so as to be able to a certain extent to keep our stocks in conformity with the demand. Firsts and seconds, selects and the better end of No. 1 Common rough maple lumber are not generally used in the manufacture of maple flooring by manufacturers who produce their own lumber, because it is not profitable to do so. We are always able to get a better price for that class of rough lumber on the market than we can get by working it through the flooring factory. The better grades of rough maple lumber are very largely used by manufacturers of automobiles, pianos, vehicles, etc. As a rule, the firsts and seconds will bring as

high a price on the market as clear maple flooring. In 1919 there was a marked shortage of good lumber in the market, in fact, at that time it was practically a runaway market. It was only a question of whether you had the thicknesses and grades that were required by the industries demanding such lumber. During that time we sorted out a large amount of No. 1 Common flooring stock and sold it on the market to other industries. The prices of rough maple lumber during 1919 and 1920 compared very favorably with the prices of maple flooring, although at that time there was a great [fol. 363] expansion in the building trades, and owing to a couple of serious fires that occurred in the flooring industry. I think flooring had a tendency to fluctuate a little more in value probably than the rough lumber. The first fire occurred in the dry kiln department of the Horner people, whose plant was located at Newberry. A couple of months later their mill at Reed City burned. The Horner people manufactured about 20 per cent or better of the entire output of Michigan or of the so called Association and at the time of the fires they had something like 19,000,000 feet of orders on their books. Their customers immediately attempted to get other manufacturers to supply them with flooring. I took on some of that business at prices which were to be fixed at time of shipment. These prices were to be at whatever I was then selling flooring at. When the Horner supply was cut off and their customers had to buy flooring elsewhere, it made it very difficult for many contractors to get the material for buildings already contracted for. During 1919 and 1920 the demand for flooring was very great, and it was necessary for my company to allocate almost every carload of flooring to the customer that was pressing us hardest for shipment, so that our warehouses were entirely empty. We were then running continuously and bending every effort to manufacture all we could. [fol. 364] In determining at what prices our flooring shall be sold, I am governed very largely by the condition of my warehouse, together with information gathered in traveling around the country and learning the demand and coming in contact with lumber manufacturers throughout the country. We also receive reports that are sent to us by the secretary of the Maple Flooring Manufacturers Association.

Q. You remember, do you not, when these so-called Minimum Price Plan and Basis, were signed and later on submitted to the Department of Justice, and the time when they were signed up, do you?

A. Yes, I have a general knowledge and recollection of conditions of that kind.

Q. Do you recall any of the details of those various articles that were signed during the period of years, or do you not?

A. I do not. They were never of much interest or importance to me.

Q. Some of those articles provided for a Minimum price of flooring. State what you observed as to how those proposed plans worked out in actual operation, if they were enforced?

A. Well, in our case, we discovered almost immediately that it could not be worked in connection with our business at all.

For instance, the architects of the country very largely control the width of flooring. In some localities you cannot sell $3\frac{1}{4}$ inch face or $1\frac{1}{2}$ inch face. In working up our lumber in the most economical method known in order to take care of our widths and avoid waste, we must make a certain amount of $3\frac{1}{4}$ inch and an inch and a half and two inch faces. It is necessary for us to sell such widths in the markets where they are used, regardless of price, when our surplus gets to a point where we feel that we must unload. The manufacturer has no choice as to the grades that he will produce. All three grades of flooring can be manufactured from cull lumber. We cannot, for instance, manufacture clear flooring at one time, No. 1 at another, and Factory at another. Only by sorting our rough lumber in the yards could we manufacture any particular widths of flooring, and that is not at all practicable, for the reason that every board slashed from a log varies in width from the previous board. Of course, we attempt to save our material, hence in sawmill practice we edge on half inch basis. One board drop may edge eight inches wide, the next one by stepping in on the circle may edge nine inches wide. We who manufacture our own lumber stock those widths as much as we can, but nevertheless, we have the odd widths to handle some time. We must handle the odd widths sometime. It is not practicable to sort the lumber before it goes to the dry kiln, because in lumber practice those widths are piled all together, and you could not be changing your machines as to widths, and so on, all the time. The lumber is piled separate as to thickness. It was impracticable to maintain the so-called minimum price plans for the reason that these various widths and grades, particularly the widths, would be dumped in the markets that were using them. For instance, the Eastern market uses—and it is practically the only market that does, $3\frac{1}{4}$ inch face. I dare say when a $3\frac{1}{4}$ inch order goes out, everybody is right after it because that is one of the widths that accumulates on our hands. The $2\frac{1}{4}$ inch face is a standard article, and the architects of the country have gotten into the habit of ordering it almost exclusively, regardless of whether it is in abundance or not. Possibly 75 per cent of our production of flooring is $13/16$ by $2\frac{1}{4}$ inch face. Flooring must also be stored in the warehouse and kept at as near a dry temperature as possible. We keep our flooring in steam heated storage rooms, and the flooring is carefully kept from coming in contact with the elements, and as far as possible in an even temperature. Our warehouse capacity is about 3,000,000 feet. We have separate racks devoted to grades and widths, and when my racks, say for three and a quarter or an [fol. 367] inch and a half are full or approaching that point, I say to my Sales Department, "Now, I am carrying as much of that as I can carry. We must unload that." We would take the first thing that looked like an order and endeavor to move the stock by writing to customers.

Q. What about your prices during 1916, 1915, 1911 and 1913

at the time these Minimum Price Plans were supposed to be in effect; how did you fix your prices then?

A. I fixed those almost entirely myself by the conditions of my stock.

Q. Well, did you observe these so-called Minimum Prices that were mentioned there in the book?

A. Absolutely no sir.

Q. How about the recommendations of the Market Conditions Committee as to what prices should be during that time?

A. It never had any effect on our prices.

Q. If you could get the prices you got them, and if you couldn't get them, you took what you could get.

A. Absolutely.

During all this time I observed a great variation in the prices made by different members. This variation existed almost at all times. Our company never paid any fines or penalties, neither were any ever demanded of our company. I do not know of any instance when fines or penalties were demanded of any other member of the Association, or any one else. Our company is a member of the present Maple Flooring Manufacturers Association which was formed sometime in March or April, 1922. Since the formation of the present Association, in fixing my prices, I know what my lumber will sell for on the open market. I know what it costs me to put it through the factory. If I can't get as much for my lumber by working it up into flooring I sell it on the market as rough lumber. My profits over and above my costs are regulated entirely by my ability to sell in excess of my ability to manufacture. If our stocks [fol. 368] are growing on our hands, there is naturally a tendency to quote lower prices. Our business is done entirely by quotations. We have no representative of any kind in the market. Our business [fol. 369] is done either by telephone, telegraph or letter. We keep careful account of our individual costs and check or compare them with the average costs sent out by the secretary of the Maple Flooring Manufacturers Association. We have sometimes made test runs and sent in the results to the secretary.

Q. And as a rule state whether or not your individual costs will be sometimes higher or sometimes lower than the average costs, or if they agreed; state what the fact is.

A. I think as a whole my recollection is that our own costs very frequently are in excess of some of the larger factories and the average price given us.

Q. Average cost given you?

A. Average cost given us.

Q. By the Secretary. Now let's get back to the subject of how you determine what your prices upon flooring shall be. Do you call in anyone else in order to find out what you are going to charge for your flooring, any other manufacturer, I mean?

A. Absolutely not. Our price is fixed by myself and the sales manager.

Q. I notice that the Association has distributed from time to time

some freight rate books and average costs were in there, and sometimes delivered values, etc. Have you used the figures in there as a price list at any time?

A. Not at all, never.

Q. What did you use the book for, so far as the average cost there, or the delivered values, were concerned?

A. We used that book as a rate book, both for maple flooring and for lumber, because it is more accurately compiled than the freight rates we can get from the depots in the small towns in which we are located.

Q. That is at Cadillac?

A. At Cadillac.

Q. I think I recall that in some of these books there were some data there with respect to differentials or spreads between the different faces, or between the different widths, or between Maple, Beech and Birch, etc. Did you ever follow that as mandatory or binding upon you, that you should charge those prices; or, if you did not, state how you did use the data that was in those books.

[fol. 370] A. That date was of very little benefit to any of us, particularly us, that is, in our business. Beech flooring has most always been on a lower value than maple.

Q. Why?

A. Because the rough lumber sells from ten to fifteen dollars less a thousand than the Maple lumber.

The demand for beech is very limited and is restricted to certain markets. It is more pronounced when there is a scarcity of maple. In the practical conduct of the flooring business it is impossible to observe any fixed price relations between the different widths or between the different grades or faces or thicknesses. For instance, if we have a long season of demand for $2\frac{1}{4}$ " inch face, we will naturally run timber that is best adapted for $2\frac{1}{4}$ " face. Later on, however, we must clean up our tag widths and when we get a surplus [fol. 371] plus of these odd widths and various stuff of that kind, we attempt to sell it to the best advantage on the market. The demands for the different widths or faces or thicknesses or grades fluctuate from time to time and never move in harmony. Sometimes there will be a very big demand for factory flooring, at other times for clear, and at other times for No. 1, and inasmuch as all of them are produced at one time, it is necessary to reduce prices on some of them at times to move surplus stocks. That is one reason why no fixed price relation can be observed. The present Maple Flooring Manufacturers Association, which was organized in the early part of 1922, has never taken any formal action with respect to spreads, although there have appeared some data in the freight rate books since 1922. Our terms of sales are of long standing. I should say of more than twenty years. In the sale of our flooring I have never felt that I was bound to charge any fixed or specified price for flooring. There never was any uniform price generally observed by other members of the Association.

(Cross-examination by Mr. Fowler:)

I have been connected with the Cummer interests for 42 years. The Cummer-Diggins Company, a corporation, was formed in 1907. There was an Association in existence at that time.

Q. Did your company join that Association immediately?

A. We had been members of the association during the period of our partnership.

Q. How long?

A. Well to my recollection somewhere around 1895.

Q. And your company has been a member of these associations ever since, has it?

A. Yes, sir.

[fol. 372] Q. What other Associations have you belonged to?

A. We also have a membership in the Michigan Hardwood Manufacturers Association, the National Lumber Manufacturers Association, the National Hardwood Association, about all the associations we can get into. We do not spend a great deal of money in those associations. We spend our time but not much money. I can not answer the question how much money we are spending in these various associations right now per annum. I suppose we spend may-be from \$300 to \$500 a year. We have three machines for manufacturing maple flooring.

Q. You remember back in about 1905 that they agreed upon a price, didn't they?

A. No, sir.

Q. A sales price?

A. No sir; I think not; I have no recollection of ever agreeing upon a sales price.

Q. You know Mr. Foreman?

A. Very well.

Q. Didn't you belong to this Association at the same time that Mr. Foreman belonged to it?

A. I did.

Q. And you have no recollection of agreeing on a sales price?

A. No, sir.

Q. You did agree afterwards upon a Minimum Price Plan, didn't you?

A. That was tried to be worked out.

Q. Well, you agreed on it, didn't you. Didn't you?

A. We signed the Articles of Agreement.

Q. You agreed—there is the signature of Cummer-Diggins upon top there?

A. That is my signature, Judge, or a fac simile.

Q. That is, you put it there?

A. Yes, sir.

Q. Do you mean to say you didn't observe it?

A. It never became operative.

Q. Did you observe it?

A. No sir.

[fol. 373] Q. You affixed your name to it and never observed it.

Did you ever pay any attention to it? Didn't you know this provision was in there when you signed it? "Minimum Price for which Maple, Beech and Birch flooring may be sold by the members of the Association shall from time to time be established under this agreement, but such minimum prices shall not exceed an amount which will give the members an average net profit" and so on. You knew that was in there when you signed it?

A. I did.

Q. Did you intend to observe it when you signed that agreement?

A. There is nothing in that agreement that compels me to do so.

Q. Well, you agreed you would, didn't you?

A. No, sir, I did not; that is recommended.

Q. That doesn't read like a recommendation, does it? It reads like an agreement. You never gave any attention to that?

A. No, sir.

Q. Not a bit. Well, that wasn't the last one you signed, was it? You signed one January 1st, 1919, didn't you?

A. I haven't seen the copy.

Mr. Darby: We will admit he signed it.

Q. Coming down to 1921 you signed another one, didn't you? In which it is provided that "the minimum price basis for the sale of Maple, Beech and Birch flooring shall from time to time be established in accordance with Article II, but such Minimum price basis shall not exceed an amount which will give the members an average net profit in excess of 5%" and so on. You signed that, did you?

A. That is the Minimum Price?

Q. You paid no attention to it?

A. We seldom have reached the minimum price.

Q. I say, you paid no attention to it.

A. Absolutely.

Q. After your signature had been affixed to it?

A. Absolutely.

Q. You don't treat all your agreements that way, do you?

A. Beg your pardon.

Q. I say, you are not in the habit of treating all your agreements [fol. 374] in that way, are you?

A. At any time during the life of any of these Associations had our prices been below that price, we might have considered it, but it never being necessary it never came to our attention.

Q. That is your explanation, that you always sold above the minimum price, and hence you did not consider the minimum price?

A. That is correct.

Q. Always sold above it?

A. I think that is correct, I think our history will show it.

Q. But, if you had come to the point where you could have sold below it, then you would have considered it, would you?

A. I don't think that would ever have been paid attention to in our sales department.

Q. Now, you get all these reports that have been explained here?

A. Yes, sir.

Q. You got all that information about other people's prices, you got it up to January and you still get the information?

A. No, I don't get any information in relation to any individual prices.

Q. Don't you get the price of every sale made by every member of this association?

A. Not at the present time. We have in some of our previous arrangements.

Q. Who sales don't you get? Tell me the name of a single member of this Association whose sales you do not get.

A. We get a report of the average sales, but if I wish to know the sales of an individual member of the Association, I can't get it today.

Q. I am not talking about the name of him; I am asking you if you do not, as a matter of fact, get the individual sales of every member of this Association. I am not asking whether there are names attached to it, or not.

Mr. Darby: The question then, I submit, your Honor, is misleading, and I think it should be made clear.

The Court: No, I think not, I think the witness understands.

A. Each separate sale? We do not get the report of individual sales.

Q. If you misunderstand me, I want to find out. Don't you get a report of every sale that is made by the members of the Association? Forget the fellow's name, I am not talking about that.

A. As a whole; yes, sir.

[fol. 375] Q. Well, is it all added up together, the total amount? Don't you get the amount of each particular sale and the price of each particular sale?

Mr. Darby: We will admit for the purpose of the record—

Mr. Fowler: I am asking the witness; I want the witness to answer.

The Court: No, let the witness answer.

A. I would rather not answer that question. I would ask you to give that question to my office man who handles the correspondence, that is, all the details of the correspondence.

The Court: Perhaps you don't understand the question, Mr. Saunders. Suppose the Wells Company makes a sale of fifty thousand feet of Maple flooring of the three different grades. What counsel is asking you is, don't you get a report from your secretary that a sale, not by the Wells Company, but that a sale of fifty thousand feet has been made at a certain price?

A. I think that is correct. I wouldn't know—I thought he was trying to get from me that I knew who it was.

The Court: I think you misunderstood him.

A. Which I do not.

Q. Do you examine those reports?

A. The last couple of years not very minutely.

Q. Are you the sales manager?

A. No, sir; I am the manufacturer.

Q. I can understand then why you would not know it as well as somebody else. Were you ever a member of any of the committees of this association?

A. I have been a member of the Grading Rules Committee for a number of years.

Q. You never was on the Cost Survey Committee?

A. No, sir.

Q. Or on the Market Conditions Committee?

A. No, sir.

Q. And you don't know so much about their operations?

A. No, sir.

Q. Now, you say that you manufacture quite a lot of lumber. Of course, that don't go into maple flooring?

A. No, sir.

[fol. 376] Q. About what percentage do you say of your maple lumber is manufactured into flooring?

A. I imagine about thirty-five to forty % of my maple is manufactured into flooring.

Q. Is this gentleman that is to be on the witness stand your sales manager?

A. Yes, sir.

Mr. Fowler: I will wait and ask him.

The Court: Just let me ask a question.

Mr. Darby: Yes, sir.

The Court: Outside of the advertising—which as I understand the testimony thus far introduced, particularly upon cross-examination, the advertising of maple flooring in order to induce the use of maple flooring instead of some other kind of flooring—outside of that what do you regard as the chief benefits which your company derives from your membership in this Association?

A. The personal contact with men who are in the same business.

The Court: Of course, you don't mean by that, simply the social feature of it.

A. No, sir.

The Court: But the business contact?

A. The business contact.

[fol. 377] (Redirect examination by Mr. Darby:)

A lumberman's friends and associates are men in the same line of business. I have no associates in the hardware or textile industries, and whenever lumbermen travel they naturally get in touch with men either in the flooring end of the business or in the rough lumber end. When these meetings are held in Chicago we meet our maple flooring friends with a great deal less trouble than when we are traveling around the country to meet them. Whenever two or three traders get together there is something doing, and we have been able to dispose of some of our rough lumber at these meetings

to manufacturers who do not own their own stumpage. That has happened very frequently. At these meetings we also discuss wages or manufacturing troubles that we have had; also car service, traffic difficulties, advances in wages, merits of the different flooring machines, etc. The standardization of the flooring has been perfected only step by step during the last 15 years, and it is one of the features of Association work. There were some of the members who were originally opposed to the standardization of flooring, and I think some are today. As a matter of fact, the I. Stevenson Company has not yet changed its machine work and their flooring will not match with the flooring of other manufacturers. One of the [fol. 378] reasons why I have not been active in the Association during the past two years is that I have been connected with the movement looking to the standardization of the lumber industry, and have devoted my time to that instead of to the defendant association. The movement looking to the national standardization of the lumber industry is now under way. At the meetings which I have attended since March or April, 1922, there have never been any discussions with respect to the future prices of flooring.

Recross-examination.

By Mr. Fowler:

Q. Since he went into these meeting matters, I will ask a question or two. You tried to prove the things you did not discuss when you get together. Do you ever say anything about the market for lumber?

A. Of our rough lumber?

Q. No, Maple flooring, when you meet these gentlemen who are concerned in manufacturing Maple flooring, do you ever speak about market conditions?

A. As to the question of supply and demand, things of that kind, do you mean?

Q. Yes. Do you talk about that.

A. Individually, not collectively, not as an Association.

Q. You mean as you are standing about together, or lunching together, you talk that all over?

A. Yes, sir.

Q. Do you talk about the prices that you have been getting for your lumber?

Mr. Darby: Do you mean flooring or lumber?

Mr. Fowler: When I say lumber I mean flooring.

A. Personally, I have no knowledge of prices ever being talked.

Q. You talk about everything else but prices?

A. That is the least of our troubles.

Q. If you don't get a good price, you will soon go to the wall.

A. Yes, sir.

[fol. 379] Q. That is what you are specially interested in?

A. Yes, sir.

Q. In the price of lumber?

A. Yes, sir.

Q. And yet you mean to say you talk about everything else but prices?

A. I don't have to know what my competitor is selling his stock for, know it from him, because he might lie to me. I know from my correspondence what some of these men are selling their goods for, I get that information.

Q. You don't lie to your competitor, do you?

A. Oh, I might not tell him everything I know about my business.

Q. So you mean to say that you gentlemen will talk about everything else connected with the Maple flooring industry but you won't hint prices?

A. I think that subject is the least discussed of any.

Q. Then it is discussed, is it? You say it is the least discussed?

A. Oh, it would be impossible not to mention it sometimes in your conversation. I might confess that my price was so and so, and the other fellow might say his was so and so.

Q. Since you have been reporting your prices from week to week, every single sale to the Association, why are you so awfully particular not to talk about it between each other?

A. The individual member does not know what my prices are as I report them to the Association.

Q. He did up to July last, didn't he?

A. Yes.

Q. Before last July—if your mouth has been shut so tight since—before last July when you were reporting your prices to the Secretary and he was sending it right out to every member of the Association, why were you so awfully particular not to talk about it?

A. I took the chance of his remembering as to what my quotations were previously and it wasn't necessary for me to mention it.

Q. Would you ever talk about what the prices would likely be in the future, whether prices were going up or down, market conditions were favorable or unfavorable, ever talk about that?

A. I might have expressed my opinion about that.

Q. Didn't you time and again talk that one thing?

[fol. 380] A. You mean now as an individual talking to an individual?

Q. Individuals talking around there either on the floor of the Association or at your luncheons, or anywhere?

A. Or, in the lobby of the hotel?

Q. Lobby of the hotel or anywhere?

A. We might discuss those things.

Q. Well, didn't you, as a matter of fact?

A. I think as a matter of fact, we would to certain extent.

Mr. Fowler: That is all.

Redirect examination.

By Mr. Darby:

Q. Do lumbermen discuss that, whether they are members of the Association, if they happen to meet on some train somewhere?

A. That is a part of their business, a part of the manufacturing of lumber, to know what it is worth.

Q. State whether or not the failure of the members to discuss future prices at these meetings since March or April, 1922, was due to the advice of Mr. Newman as their attorney, not to do that? Did that have any connection with it?

A. I think there was some discussion as to the idea of future values before we were advised that we should not do it.

Q. And you received that advice before the formation of this new Association?

A. We did.

Q. And you have tried to observe it?

A. Absolutely.

[fol. 381] (Recross-examination by Mr. Fowler:)

Sales reports were sometimes issued before meetings, and sometimes were distributed at the meetings. At other times they would not be received before we left for the meeting, although they had been mailed before.

J. L. COLBY, being first duly sworn, testified as follows:

(Direct examination by Mr. Darby:)

I live at Cadillac, Michigan, and am sales manager for the Cummer-Diggins Company. I have been sales manager since July 1st, 1919. Our terms of sale on maple flooring are 2 per cent cash discount for payment within 15 days from date of invoice; one per cent for payment within thirty days, and sixty days net. Our terms on flooring are an outgrowth of the lumber terms that our Company has used for a good many years. We use the same terms in our lumber business, except that in selling lumber we give a two per cent discount for cash in ten days. This difference between the 10-day period and the 15-day period is because flooring moves to a greater distance than lumber does. The bulk of our lumber is marketed in the State of Michigan, whereas flooring moves very largely to New England and Pacific Coast points; hence, we have to allow a little longer time for cash discounts because a customer naturally does not like to pay for a car of material until he sees [fol. 382] it in his yard. The terms I have mentioned have been used by our company since I have been connected with it. These terms, however, are not invariably followed. We do not split hairs on the matter of terms and agree to anything that seems fair and reasonable. In the New York market some buyers insist on taking

a two per cent cash discount five days after arrival of car. We do not like that and tell our customers that if they will send us within ten days after receipt of invoice a substantial amount to apply on the car, we will allow them the two per cent cash discount, which they can take five days after arrival of car. If we need business we sometimes accept their terms, and if we are not in need of orders we exact our own terms. The matter of terms is governed largely by supply and demand. The Pacific Coast buyers also demand an extension of the usual terms and we meet their demands. We have never considered ourselves bound by any terms of sale that might have been established by the Association. We used our own judgment entirely. I do not know of any uniform terms of sale so far as the present association is concerned that are being lived up to. I think the Association has gathered from different members what might be termed a consensus of opinion as to what the prevailing cash discount terms were, but any statement that was issued with respect to such matters was not considered binding by any one that I know of. We have always made our own terms of sale in order to meet conditions as they changed from time to time. We do not have what is termed, or commonly known in the trade as an exclusive representative. We sell to anybody that we choose to. We sell to both wholesalers and retailers and allow from \$1.50 to \$2.00 commission. We have no set rule that governs commissions. We use our own judgment and decide whether a buyer is entitled [fol. 383] to \$1.50 or whether he is entitled to \$2.00. It depends somewhat upon the volume of business that he is turning our way and the length of time perhaps in which he has been soliciting business for our product. Sometimes we quote net instead of allowing any commission; sometimes \$2.00 and sometimes \$1.50. I know of no rule of the present association with respect to what commissions shall be allowed or when commissions may be allowed or as to what amount shall be allowed. It happens that we have never paid more than \$2.00 a thousand commission. We have at all times felt free to allow any commission we pleased. We quote our flooring either f. o. b. Cadillac or delivered at point of destination, just as the customer wants it. It makes no difference to us. In practice, however, most of our flooring is sold delivered and most of our prices are quoted delivered because the customer wants it that way. In fact, in the New England markets and in the Pacific Coast markets they demand it. They want the mill man to take the chance with respect to weights determined by the railroad company. I should say that 90 per cent of our flooring is sold on a delivered basis. We have no objection to selling f. o. b. mills, and in fact we quote that way when we are requested to do so. We make no separate charge for freight on flooring. For instance, if we should sell a customer at Kansas City based on a quotation that we made him delivered at Kansas City, we would invoice him at the delivered price. Then we would make a deduction on the fact of the invoice covering the actual freight that he would be called on to pay the railroad company, and when he remits to us, he deducts the actual amount

of freight that he pays to the railroad company at destination. We [fol. 384] have no registered special representatives now and never did have any. There are no rules of the Association with respect to registered special representatives that I know of. We never refuse to sell to the consumer direct. If a contractor writes us for a price we will quote him. Of course, we may not quote him the same price that we would quote to a retailer residing in the same town because we would observe certain ethics in the trade in protecting the business that the retailer has built up, but we never refuse to quote any one. I do not know of any association rule with respect to not selling contractors or the consumer direct. Our company does not now and has never manufactured inch and a sixteenth flooring since I have been sales manager. I think a good many years ago they manufactured a limited quantity of it.

I have been attending the association meetings since July 1, 1919. From July 1, 1919 to January 1, 1922, I attended a majority of the meetings but since January 1, 1922, I don't think, as I recall it now, I attended over three or four meetings. I have had too many other duties to look after in the meantime. Mr. Saunders kept me too busy at other matters and we thought the other matters were of more importance than the meetings of the Flooring Association.

Since I have been attending meetings I have never heard any discussions at them with respect to the price of inch and sixteenths flooring. I do not know of any agreement with respect to prices on inch and sixteenth flooring. I never attended any association meeting at Milwaukee or Marinette or Wells, and I don't know that any meeting was ever held at those points. All the association meetings that I have attended have been held at Chicago. When I first started, the meetings were held at the La Salle Hotel, but they were later changed to the Congress Hotel. There have been no meetings of the Association that have been held elsewhere since I have been [fol. 385] connected with the Association. Members receive announcements of meetings or calls for meetings before they are held. I never received a notice of a meeting of the Association to be held at Milwaukee or Marinette or Wells or at any place other than Chicago. I am a member of the Cost Surveys Committee. As I recall it I became a member early in 1922, sometime in March or April. I don't remember the exact month. I am sorry to say that I have never yet attended a meeting of the Cost Surveys Committee and don't know what they did talk about when they got together. I have not been a member of any other committee. Before making any changes in our price for flooring or sending out any new price lists, it is a sort of unwritten law at our office that the matter must be the subject of a conference between the general manager and the sales manager. This is for the reason that the general manager looks after production and the sales manager looks after sales and we recognize that prices cannot be intelligently fixed without considering both the production and the selling end of the business. In these conferences we consider several different factors. I will try to state them in the order of their importance to us. The first consideration is our stock condition. In other words, the amount

of stock that we have on hand unsold in our warehouse of each particular item of flooring. We manufacture all faces of 13/16 inch flooring, from inch and a half, two inch, two and a quarter, three and a quarter and three and a half inch. We do not manufacture two and a half inch. We also manufacture $\frac{3}{8}$ by an inch and a half and $\frac{3}{8}$ by 2 inches. We manufacture half an inch by 2 inch, half inch by two and a quarter inch. I think that is all. The primary factor that we consider is the amount of stock unsold on hand in our warehouse of each individual item. With that amount of unsold stock in our minds, the general manager then advises us as to what his ability is going to be within the next few months [fol. 386] to manufacture certain items, certain sizes and certain grades. That is very important because in the manufacture of flooring you cannot arbitrarily manufacture any width or grade you want to just because the demand happens to be there. To begin with, your flooring has got to be air dried for at least a year and you have got to take the widths as you find them. While of course you can temporarily sort out certain widths for a short period of time, you can't keep that up. Within the course of a month or two you have got to manufacture all of the width that your flooring stock produces so that that information that is in the mind of the general manager is a very important factor in adding to or deducting from the amount of stock that we always have on hand in the warehouse.

Now the next point that we take into consideration is the contact that we have with our customers and the trade generally. I mean by that the eagerness or resistance, as the case might be with which the trade or our customers are receiving our prices, if they are sending in a large amount of business within a short period of time and a lot of that business is coming by telephone and telegraph that is an indication to us that the customer is trying to get covered and it also means to us that some one else is getting more for their flooring than we are, hence the natural inclination providing our own stock condition warrants it, is to change our prices. On the other hand—

“Q. Raise the prices in instances like those, I suppose?”

A. Yes, sir, if the customer is too eager we would be inclined to raise our prices. On the other hand, we get a good deal of competitive information from our customers. They are continually [fol. 387] writing us and telling us what other manufacturers of maple flooring are getting for their product.

Q. Both members and non-members of the Association?

A. Yes, sir. In fact, as an illustration, just this past week, we were obliged to turn down several cars of flooring because another member of it—he happened to be a member of the Maple Flooring Manufacturers Association, wants the business for three or four dollars less than we do. Then we get information from our customers as to competition of other woods, that has to be taken into consideration all the time. I think during the past three or four months competition of oak has perhaps been necessarily given more

attention than it has in two or three years prior to that time and we get all that competitive information continually. There is hardly a day goes by that we don't get information from our trade as to what we have got to do to meet competition.

Q. Sometimes you will lower your prices to meet that and other times you are unable to do so and refuse I suppose?

A. Yes, largely depending upon how much stock we have on hand of a certain item."

The general manager knows in a general way the amount of unfilled orders we have on hand, but if the amount happens to be large I would give him the actual figures. When the general manager is in town he is in touch with the demand as expressed by inquiries and orders placed because he looks over all the mail. We sell a large amount of our maple and our beech in the form of rough lumber on the open market and that puts us in continual touch with the prices that can be realized and are being realized for rough maple lumber. That is another guide as to whether we shall decrease the production of flooring and sell some of — in the rough or whether [fol. 388] we shall continue to manufacture our normal manufacturing capacity into flooring.

Q. Are there any other conditions generally speaking that you take into consideration?

A. Well, we of course always consider the general—what might be termed the general marketing and producing information that we gather from miscellaneous sources among which are reports from the Maple Flooring Manufacturers Association which indicate what the total stock condition is in the industry, and then we are always almost daily in contact either by telephone, through doing business with lumbermen in the rough maple *maple* market or we see them on the train very often.

Q. Do you talk business with them? A. Naturally, every time

Q. Do you talk business with them?

A. Naturally, every time we see them we find out all we can."

I do not think I have attended more than three or four meetings of the Association since March or April, 1922. Mr. Saunders and I have formed our own opinions as to what our prices should be and have carried them out.

Q. After you fixed your prices have you sent them to other members of the Association or to your customers?

A. Why, we usually send them to our customers. We don't like to—we wouldn't like to send them in all cases to our competitors because we might be announcing a lower price than they are asking. We would like to get to the market with that before they found it out.

We try to report all our sales to the secretary of the Association weekly. It is a fact that the total sales given to the secretary monthly are far in excess of the aggregate of the weekly sales reports that are made to him. In fact, if you were simply judging from the amount of stock reported sold you might think the market was pretty weak. The weekly sales reports are not complete. Nearly every week

there is apparently quite a quantity of stuff that is not reported, but [fol. 389] of course you don't know that at the time, but eventually when you see statistics showing how much stock is manufactured and how much sold, you can readily see that there has been a large quantity that has never been reported. We have an accurate record of our individual sales, but many times the press of other work is such that we do not make these reports. Sometimes we detail a man in our office to do that, who may forget it or may be away on vacation, or sometimes because of the press of other work we just don't do it. I suppose it is the same with other members. I was familiar with the advice that was given the Association by Mr. Newman with respect to discussion of future prices at Association meetings. I don't recall that I ever heard any discussion as to future prices of maple, beech or birch flooring at any meetings that I attended. Since the formation of this present Association I have never been a party to any agreement or arrangement or understanding, either express or implied, which in any wise limited my discretion or the discretion of my company as to what prices should be fixed on maple, beech or birch flooring. I do not know of any such understanding, arrangement or agreement among any other members of the Association. We have never sent out any of those delivered values or any information contained in them to our customers for use as price lists. All our prices go out on our own stationery. We have never used the data contained in those rate books as price lists because they did not fit in with our prices. They were not the same as our prices and we had no use for them. I think as a rule, in 1919, and subsequently, while the so-called minimum price plan or minimum price basis was in existence, our prices were higher than the so-called minimum cost basis. There were times when our prices for certain items of flooring or certain [fol. 390] widths or grades were sold lower than the minimum price or basis. This was due to the supply and demand so far as our own company was concerned. The maple stumpage in the Cadillac district has a very high reputation and is considered to be better than the stock from Northern Michigan or Wisconsin. Our costs are somewhat higher in Cadillac than the cost of some manufacturers in smaller communities. Of course, the stumpage cost is higher to begin with because the timber is worth more. I think on an average our costs would be higher than the average costs sent out by the secretary of the Association. So far as we have been able we have checked our own costs occasionally with the average costs.

(Cross-examination by Mr. Fowler:)

Q. Who makes out the reports for your Company.

A. Who makes them out? You mean the reports to Mr. Keehn?

Q. Reports to Mr. Keehn, yes.

A. Why occasionally I have made out some of the reports but most always one of our other officers have done that.

Q. Aren't they made out under your direction?

A. While I am office manager I don't go to the man each individual time and tell him what he is going to write on the paper.

Q. I am not suggesting that but you have charge of the office there?

A. Yes, sir.

Q. You have charge of those men that do make out the reports?

A. Yes, sir.

Q. Their instructions are to report every sale made, isn't that so?

A. Their instructions are to make up a report once a week.

Q. Don't you see that it is made up once a week?

A. Well, I suppose I should, but sometime I don't.

Q. You try to keep faith with the Association, don't you?

A. Absolutely.

Q. And it is your purpose and intention to report all of your sales?

[fol. 391] A. Yes, sir.

Q. And report them correctly?

A. Yes, sir.

Q. If one is omitted that is accidental?

A. Yes.

Q. I mean possibly not accidental but because something else has crowded it out?

A. Yes, sir.

Q. At the end of the month you report production too, don't you?

A. Yes, sir.

Q. You never omit that, do you?

A. I don't recall when we have, no.

Q. You have given the various elements that you consider when you sit down to make out a price for your maple flooring, you change the price yourself now and then, is that correct?

A. We change the price according to supply and demand as it fits our own business.

Q. You and the general manager meet together and you fix a price?

A. Yes, sir, for our stuff.

Q. You observe that price until you change it?

A. Well, generally so, but if in the meantime the sales manager finds that he can get more money from a certain market why he gets it.

Q. That is, there is no restriction on the amount you get above that price agreed on?

A. Oh well, there wouldn't be any restriction particularly below that. What I meant to convey was a general idea of prices or a general change in prices is only made through consultation between the general manager and the sales manager. Of course some man has to use a little judgment now and then himself, can't always call these conferences at any time he wants to.

Q. When you and this general manager sit down to make up those prices you have in your office there all of these sales reports, weekly reports that come from the Secretary of the Association?

A. Well sometimes we have all of them and sometimes we have not.

Q. Under your regulations you are supposed to have them, that is true, isn't it?

A. We are supposed to have received them, of course we don't [fol. 392] always save them until—

Q. Do you recall any time when you did not receive them?

A. Why, I don't recall of any specific instance right now.

Q. Do you examine them?

A. If I have time I do; I try to.

Q. As a matter of fact, was there ever a report came into your office you didn't examine?

A. Lots of them.

Q. Can you tell us one within the last three months you didn't examine carefully?

A. I haven't looked at the report of completed transactions for the last four weeks.

Q. When did you change your prices?

A. When did we last change them?

Q. Yes.

A. We made a change downward in our prices, well it has been about thirty days ago, and then we made another change upward in one particular item just last week.

Q. That went up?

A. Yes.

Q. Now when you go to consider a change of price, fixing your price for the future, do you ever look at the price that other fellows are getting as shown by that report?

A. It is not customary to look at it at that particular time, if I happen to remember in my head when we have these conferences, if I happen to remember that the general average of reported sales and completed transactions is higher than what we are getting, we naturally would take that into account when we have these meetings.

Q. As a matter of fact, do you give consideration to the information that you get from those reports?

A. Yes, but it is not—well, it is really only of secondary importance as far as we are concerned.

Q. I asked you if you gave it consideration. I believe you say that you do. That is correct, isn't it?

A. I don't just understand your question.

Q. Do you give consideration to the information that you get from those reports when you are making up your price lists?

A. We give consideration to it if it fits in with our own individual condition, if it don't, we don't care anything about it, don't give any consideration, to it.

[fol. 393] Q. Will you tell me when it doesn't fit in with your individual condition?

A. Yes, sir.

Q. What do you mean by that?

A. I mean our individual stock condition. For instance, we might—the general reports from the Association might indicate

that a certain item of flooring was moving freely, but we ourselves might be wrong on that item, and another thing, our ability to manufacture in the next two or three months might be greater than usual of that particular item, hence we would not incline to be very bullish on that item, we would be soft.

Q. If the reports from the Secretary show that stocks are freely moving, don't you take that into consideration?

A. We do if it fits in with our own business.

Q. Will you tell me when that wouldn't fit into your business one way or the other.

A. I beg your pardon, I think I just did tell you as clearly as I can.

Q. Maybe I can't quite understand. Of course you say you meet a gentleman on the train and you talk over, you get some miscellaneous information from him?

A. Yes.

Q. And you take that into consideration?

A. Yes, sir.

Q. Give it weight?

A. To some extent.

Q. And yet you don't pretend now that this accurate information that you get every week as to actual sales being made, that you don't give any material consideration to that—you don't claim that, do you?

A. I don't think I said that we didn't give any consideration to it. I said—

Q. Didn't you give material consideration to it?

A. No, I wouldn't agree with you there, that is really a secondary matter with us. The first consideration with us and the most important one is our own individual stock condition and the attitude of our own customers. In other words, it is our own individual condition as relating to supply and demand.

Q. Now suppose that you have a large stock on hand.

A. Yes, sir.

Q. Suppose this report that is in your office shows that everybody else has got a small stock on hand, wouldn't you take that into consideration?

A. That would depend, the weight that we would give the fact that others had a small stock would depend entirely upon the amount of warehouse space that we might have left and the amount of nearby shipping orders that we might have for that particular item. If we had a lot of shipping orders that were coming due within the next two or three months and our manufacture of that particular item was not going to be above normal, we would probably give some consideration to it.

Q. Why would you give any special consideration to space in your warehouse when you could move your lumber out at a good high price because other people didn't have stock?

A. Well I was trying to answer your question. I think you intended to ask me as to whether we would raise our price or not, didn't you?

Q. I asked you if you wouldn't take that fact into consideration that other people didn't have much stock on hand in fixing your price?

A. That perhaps would be one factor in our consideration or in making our calculation.

Q. As a matter of fact, isn't it a very important factor in fixing prices, the amount of stock that is on hand, the total stock, by these manufacturers?

A. Well, the important factor is supply and demand and of course the total stock the manufacturers have got that is supply. That is the supply.

Q. Those are the two large elements, supply on the one hand, demand on the other?

A. Yes, sir.

Q. And you can turn there to those reports and see what the supply is—isn't that exactly what you do?

A. No, sir.

Q. Why don't you, that is what you are trying to study.

A. We use that as one factor I am telling you.

Q. You do turn to them and look at them in order to determine what the supply is, don't you?

A. We give them some consideration, yes, sir.

Q. What do you mean by "some"?

A. I mean that it is not the primary consideration

Q. What is the primary consideration?

A. Our own individual stock conditions and our ability to manufacture certain items during the next two or three months.

[fol. 395] Q. Why is your individual stock condition so much more important than the stock condition of the whole supply?

A. Because we might have trade that demanded a larger percentage of certain items than some other person's trade.

Q. Supposing you had a small supply on hand and you would turn to these reports and see that the market is flooded, that there is a big supply, would you undertake to put your price up because you had a small supply?

A. We would if our own individual customer were demanding more of that item than we could supply.

Q. Isn't it a matter of fact that the demand upon you is controlled very largely by the total supply on hand by everybody?

A. In general it is quite largely but not altogether. For instance, I can tell you during I think it was in 1920, the general supply of factory flooring was immense, probably the largest stock that has ever been on hand, individually we didn't have any, we were over-sold most of the time simply because we had worked up a trade for that particular item. Our prices on factory were advancing while the rest of them were declining.

Q. That was 1920?

A. I believe it was.

Q. Wasn't that when prices went clear out of sight on everything, when the ordinary rules of supply and demand did not control at all?

A. No.

Q. Just getting everything you could?

A. No, in the latter part of 1920 prices on factory flooring declined very rapidly.

Q. That was the very last part of 1920, wasn't it?

A. I think it commenced—I think factory flooring commenced to decline about the middle of the year, that is my recollection of it.

Q. Now again, you have in your office there about the middle of every week, or supposed to have, every sale that is made by your competitors that belong to the Association and the price that he receives—that is correct, isn't it?

A. Well, we have a sales report, of course that doesn't contain every sale always.

Q. It is intended to.

A. I guess it is intended to.

[fol. 396] Q. When you are fixing prices now, your own prices, don't you give any consideration to the prices that your competitors are getting?

A. Well, only in a general way. I think I told you a few moments ago that there has been two changes in our own prices of a certain item during the past two weeks and yet through one cause or another I haven't looked at a sales report for the last four weeks.

Q. I believe you stated awhile ago that your salesmen would report—

A. Not our salesmen, we have no salesmen.

Q. Your customers, that was it, that your customers would report in about prices?

A. Yes, sir.

Q. Of course you could check up whether that customer was telling you the truth or not, couldn't you?

A. No, sir.

Q. From your reports?

A. We could not.

Q. If it was an Association matter?

A. We could not.

Q. Why couldn't you?

A. Because the identity of the—we wouldn't have the identity of the member.

Q. How was it before July of this year?

A. Well, the customer is not going to tell you in very many cases just who the competitor is. He might say, he would tell you in a general way, he would say that some member, some prominent member or some large member of the Association, his prices might be so and so or might tell you that some manufacturer outside of the Association but very rarely is he going to tell you exactly who it is.

Q. You can turn to your report there and see whether any member has been cutting under that price by looking down the entire report.

A. Yes, if you want to take that trouble you can do that.

Q. Now again, in regard to your cost, how do you reach the cost of production with reference to your raw material, what do you put your raw material in, at what price?

A. We put it in at what we consider the average market price for raw material.

[fol. 397] Q. You never helped make out one of these cost sheets, did you?

A. Not for a number of years.

Q. You are controlled in your market price considerably by the cost of production, aren't you?

A. Well sometimes that is a factor, of course we always aim to take it into consideration, but for certain items of flooring you can't always say that you are going to get the full cost or more, sometimes you have to sell it for less than that.

Q. In estimating your cost of production you always use that estimate made by the Association, don't you?

A. In estimating our cost?

Q. Yes.

A. No, sir.

Q. What do you use?

A. We use what we think in our own minds is our own cost.

Q. Don't you report to the Association your cost of production?

A. No, sir, we have not for a number of years.

Q. You are asked every month, aren't you? Two or three months?

A. We are asked every quarter I believe.

Q. Did you never answer it?

A. Well, I wouldn't say we never answered them but we never gave them the information, that is, we haven't for a number of years.

Q. Why don't you give them your information?

A. Well, because we have a peculiar condition in that our flooring factory is under the same roof with some of our other business and at least quarterly it is a little bit hard for us to segregate the individual items that are applicable to flooring separately and we don't want to give the Association anything excepting what would be an actual cost. Now if it were yearly instead of quarterly we probably would be in better position to give those costs.

[fol. 398] I should say offhand that our cost is probably a little higher than the average cost reported by the Association. Costs are somewhat higher around Cadillac. We make from 3½ to 4 million feet of flooring a year, and could make more if we wanted to. Our Association number is 14. As stated before, our terms of sale on [fol. 399] flooring are different in one respect than the terms of sale for our other lumber. When a car is billed we ascertain from the railroad company just what it weighs and what freight rate is going to apply to it, and we make the calculation for the convenience of the customer and deduct the freight from the face of the invoice, so that he will know just exactly how much he owes us and how much he owes the railroad company. We deduct the actual freight, which

sometimes differs from the rate set forth in the freight rate book issued by the Association due to the dropping of fractions of a cent in the freight rate book. In nearly all instances the rates in the freight rate book agree with the rate of freight from Cadillac. I understand that fractions of a cent are not used in the freight rate books. There wouldn't be any difference so far as the customer is concerned because he pays the actual freight the railroad company assesses and no more. We deal only with the actual amount of freight.

I would not say that our membership in the Association is not of any great value. I think that our membership in the Association is of value to us in a good many ways. There is a question of wages which is many times a very important question, and there is the question of railroad matters, car supply and rates and there has been a good deal of agitation in the last ten years at various times, the railroad companies have been attempting to change the classification of flooring and if we hadn't had any Association I guess they would have been successful in doing it, and then there is the standardization feature, which is worth a good deal to a flooring manufacturer. For instance, some of the larger buildings require all the way from 500,-[fol. 400] 000 to a million feet of flooring for the building. Now then, the contractor cannot in very many cases buy that all from one manufacturer, and if we were not standardized, if we didn't have standard thickness and standard face width and a standard matching, it would result in a lot of confusion. As it is we can,—the various manufacturers can supply flooring for the same building and in fact for the same floor in the building.

"Mr. Darby: How about the yard man, standardization with respect to him?"

"A. Oh yes, if it were not for the standardization the dealer would be confined in his purchases to one manufacturer, he couldn't buy from all manufacturers, he would only have to buy from one for fear of getting his stock mixed up and for fear that John Jones who bought flooring for a room from him last year, wanted a few pieces now to patch in, he would be afraid if it were not for the standardization that he couldn't give him the same kind of flooring that he had before."

The Court: How long since there has been any change in the standard sizes and quality of inspection?

"A. There have been no changes that I know of during the past two years."

(By Mr. Darby:)

"Q. There is a threatened change now, is there not; wasn't it taken up about the last meeting? Mr. Saunders said there that the other people were demanding a certain change."

"A. The standardization committee of the National Hardwood Lumber Association has been attempting to make a minimum length of all lumber 18 inches."

"A. Of course in flooring it has been customary to produce extra

[fol. 401] shorts which are 9 inches and up and the flooring people naturally feel that in the interests of conservation the 9 inch minimum should remain as it is."

"Q. How about the conservation of the raw material? Isn't it a fact that in former years the lengths of flooring were from 4 to 16 feet?"

"A. They were."

"Q. What are they now?"

"A. They are now in the Clear from 2 to 16 feet, in the Number One grade 1½ to 16 foot and in the factory grade they are from one to 16 feet. I think every flooring manufacturer would bear me out in the statement that were it not for the Association the lengths of flooring today would be 4 to 16 feet and we would consequently be wasting a large amount of lumber in the manufacture of flooring."

"Q. Would that require the consuming public to pay higher prices for that?"

"A. They would. They would have to pay higher prices."

"Q. How about the reduction in thickness? Tell the court about that?"

"A. The flooring is now 25/32."

"Q. It used to be what—it is now 13/16th-, isn't it?"

"A. It is now 13/16ths."

"Q. It used to be thicker?"

"A. It used to be 7/8ths."

"Q. And the tongue and groove were lowered so as to leave the wearing surface the same and what was taken off did not affect the wearing quality of the flooring, isn't that a fact?"

[fol. 402] "A. That is right and that was as a result of the standardization program of the Association."

"The Court: Is that any different than it is in any other line of the lumber business, thicknesses used to be full with an eighth to spare for dressing, then they got down to 16th, now you get an inch and three quarter net. Isn't it the same history in the flooring business that it is in the lumber business generally?"

"Mr. Darby: It took concerted action, didn't it, to bring that about. If they all pursued their independent course none of it would match with the product from the other mill."

"Q. How about the benefits that you have received or the value you place upon the benefits that you have received from a membership in the Association, from the advertising in pushing maple, beech and birch against the oak people?"

"A. We think that the advertising program of the Association during the past two or three years has been the most important part of it. The Association really had to put on this program of advertising in order to compete with the vast amount of advertising that was being done by the oak flooring people, and there is no question but that from that standpoint, the Association has been of a great benefit to us."

I don't want to give any one the impression that we don't pay any attention to the statistics distributed by the Association. I do

want to state that the statistics are not the primary consideration with us. If they fit in with what we think is the market and with what we think and what we know is our individual stock condition and our own situation with regard to customers, then we given them consideration. The Cummer-Diggins Company and the partnership [fol. 403] that preceded it have been in business for a great many years. They have many customers who have been with them for a great many years and who look to them for their principal source of supply. As a matter of fact, our production of different grades differs from the production of other manufacturers, I think we manufacture more of certain widths. For instance, we manufacture more three and a quarter inch flooring than many other manufacturers do. We are more concerned with our own supply and ability to produce and with the demand of our own customers than with the supply of some other manufacturer, because we are in such position we can at any time turn this lumber or a large part of the lumber into the market and sell it instead of manufacturing it into flooring. At times we can make more money by selling the rough lumber than we can by manufacturing it into flooring.

Recross-examination.

By Mr. Fowler:

Q. You mean your conditions are different from other members of the Association?

A. In what way?

Q. In the way you have just now mentioned.

A. Well, perhaps there are some other.

Q. Have you an individual trade that the others have not?

A. Oh, we haven't got any strings tied to any of our trade exactly but I think that we manufacture perhaps a little larger amount in proportion of some items, three and a quarter inch face, for instance, than do some of the other members.

Q. Do you mean to say that you don't regard this Association as being any value as to the prices of maple flooring?

A. I don't think I made that statement.

Q. Do you consider it of value with reference to price of maple flooring?

A. I consider it of value from the standpoint of arriving at intelligent cost basis for the rough maple lumber and as of value in [fol. 404] reflecting what the stock conditions are and what past transactions have been. It is of some value to that extent.

Q. What do you mean by value? Don't you mean by that that it enables the members of the Association to get more for their flooring than they otherwise would get?

A. I mean that it is a factor which contributes to their knowledge along with other factors in making up their prices. As far as we are concerned there are other factors besides that that are of more importance to us.

Q. Will you answer my question: Don't you think that it en-

ables the members of the Association to get more money for their maple flooring than they otherwise would get?

A. Why, at certain times they might get a little more and at certain times they might get a little less.

Q. Take it at an average, will you answer my question, do you not think it enables the members of the Association to get more money for their flooring than they otherwise would?

A. That is you mean——

Q. I mean just what I have asked.

Mr. Darby: If you don't understand it, have him explain it.

The Court: The question is very simple, very plain, it cannot be misunderstood.

A. You mean then, that if there were no Association we wouldn't get as much money, is that what you mean?

Q. Sure.

A. Well, that is a pretty hard question to answer. I confess that I don't know.

Q. What is your judgment, don't you think that the members of this Association get more money for their maple flooring than they would get if it didn't exist?

A. Well, I don't think that I am competent to answer that question, I don't know.

Q. You are thoroughly familiar with the Association and with the Maple Flooring business, what is your judgment?"

Mr. Darby: It is purely hypothetical, and the Association has existed according to the allegations of the petition since 1897.

This witness is asked to play the part of a prophet.

Mr. Fowler: An expert.

Mr. Darby: To pass an opinion upon a state of facts which are assumed to exist and which he has never experienced.

[fol. 405] The Court: The question is very simple, it can be answered.

A. If you want merely my opinion, my opinion would be that we perhaps would get just as much for our flooring over a long period of years without any Association as we have with one, but we would have very violent fluctuations.

Q. Then what you mean you are stabilizing?

A. I don't exactly mean that; I mean at times our prices would be higher, and at times they would be lower, perhaps over a period of years your average might not be greatly different.

Q. If this Association has no effect on prices and not intended to have any effect, can you explain why it was that your company signed agreement here to fix a minimum price?

Mr. Darby: Were you with the company at that time?

A. I don't know whether I ever signed for the company any agreement or not——

The Court: He didn't ask you that. Why do you not pay attention to the question and then answer it to the best of your ability?

Mr. Darby: We object to the question put by counsel for the reason it appears that Mr. Sanders, the general manager of the company signed that.

The Court: He didn't ask him who signed it. He said your company signed it.

Mr. Darby: He is the sales manager and that falls within the province of the duties of Mr. Saunders.

The Court: Answer the question if you can.

A. Will you please repeat the question?

(Last question read.)

A. Well, at that particular time there was a good deal of talk about recommendations from the Federal Trade Commission to the effect manufacturers should know what their costs were and they should get cost plus a certain amount for their product and I assume that our signing of this agreement simply was signifying our intention to try to get the cost out of our product.

Q. That is you were trying to fix a certain amount as the minimum price that any member would charge?

A. No, I don't think we were exactly in that light.

Q. Your name is J. L. Colby, isn't it?

A. Yes, sir.

[fol. 406] Q. Didn't you sign your company's name to that agreement?

A. That is my signature.

Q. This was the January 6th, 1921, price plan basis. If this Association is not intended to have any effect on prices and doesn't have, why is it that every single report, sales report, those weekly sales reports that go to the Secretary, has the exact price of the sale of lumber made in the sale and that is repeated to every member the price of the lumber that was sold, why is that all exchanged between you individuals?

A. The price of the flooring?

Q. Flooring I am talking about, why is that price always exchanged between you members if it is not worth anything?

A. It is a matter of statistical information, some members might consider it worth more than others. I assume that the member can consider it or not just as he likes when he gets it.

Q. That is your answer to the question, is it?

A. I think I understood your question.

[fol. 407] Redirect examination.

By Mr. Darby:

The document you hand me is a true and correct statement of the wages paid from 1912 to 1913 to different employees in our flooring plant. Throughout the period the number of working hours a day remained the same, namely, 10 hours.

(Said document marked Defendant's Exhibit "K" received in evidence.)

Mr. Newman: We desire to make a statement to the Court at this time, in regard to saving some time. We have a large number of this class of witnesses and I made the suggestion yesterday to Mr. Thompson, if we put four or five or six of them on the witness stand, that the Government agree that the remaining witnesses' testimony would be substantially along the same line. I don't know whether that is agreeable to the Court or not.

The Court: Very agreeable to the Court if it is satisfactory to Counsel.

Mr. Fowler: Your Honor, so far as I know there is no objection to it. Of course if they put on a witness who will swear materially different, then I will have to change that.

Mr. Newman: We thought it would save time, your Honor.

The Court: It will be very agreeable to the Court so far as this is concerned.

Mr. Darby: While we are on this subject, we must let certain witnesses know in the West, who are lumber dealers. In Chicago, Philadelphia, New York and Boston and other places we took a good many depositions of dealers, who have bought this flooring, all over the country for years, from members and non-member manufacturers. We have put in the quotations they received both from the [fol. 408] members and the non-members, and they have testified to the existence of competition, and that during all the years there was a marked fluctuation in the prices received from the different members of the Association. The inquiries in many instances are there, and the quotations that were made in response to those inquiries by the different members of the Association and non-members. Now we have certain other dealers in Minneapolis, and we must give them word right away if we want them to appear here. It doesn't seem to us that their evidence would justify taking the time of the Court in merely adding to the great mass of similar testimony that we have procured in different parts of the United States. Now if counsel will stipulate that these witnesses will testify along the same lines as those other witnesses have testified, there will be no need of calling them here; otherwise, we will have to do that.

The Court: Of course, that is a matter for counsel. Anything that will shorten this trial and at the same time preserve the rights of the parties will be very desirable.

Mr. Fowler: I think we will agree that they will testify to that. I know you wouldn't have them here if they wouldn't.

Mr. Johnston: I will frankly admit that. I would suggest that you give the names of those three men and let it show in the record, these three men who, if called by the defendants, will testify along the same —

Mr. Darby: Mr. Tozer, of the Tozer Lumber Company; Mr. Lamp-land, of the Capital City Lumber Company; Mr. Kirkpatrick of the Hill Lumber Company, of St. Paul.

Mr. Johnston: Where is the Capital City Lumber Company?

[fol. 409] Mr. Darby: St. Paul. The Tozer Lumber Company, I don't know whether it is in St. Paul or Minneapolis.

Mr. Keehn: Minneapolis, Minnesota.

Mr. Johnston: Minneapolis.

Mr. Newman: May that be stipulated upon the record?

Mr. Fowler: Yes.

Mr. Newman: To the effect that these three gentlemen, if called, would testify along the same lines as the witnesses examined, let us say, in Philadelphia, Boston and New York, that their testimony is confined solely to that subject.

PERCY S. McLURG, being duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

I am 44 years of age and in the logging and lumber business. I have been engaged in that business for 25 years. I am connected with the Kneeland-McLurg Lumber Company of Phillips and Morse, Wisconsin. We manufacture all kinds of hemlock and hardwood lumbers and some pine, as well as maple and birch flooring. We have one machine for the manufacture of flooring. It is a Yates machine and will produce about two million to two and one-half million a year.

My Company is a member of the Maple Flooring Manufacturers Association and first became a member of the Maple Flooring Manufacturers Association in 1919. I cannot state at this time wherein the several Articles of Association differed from one another, although of course I was familiar with the Articles at the time they were executed.

Our Company owns about three hundred million feet of stump-[fol. 410] age located in Price, Ashland and Iron Counties, Wisconsin. We estimate that about 105,000,000 of this is maple and birch, of which about 80% is birch.

We do not sell any rough maple lumber but work up in our flooring mill all of it that we produce. Our Company began the manufacture of maple and birch flooring during 1915. We desire to make flooring so as to enable us to ship mixed carloads to the retail yard trades and use flooring as a drawing card for other business. Flooring is a side line with us and constitutes about 5% of our business.

I have attended about 40% of the Association meetings that have been held since our Company first became a member. Once in a while our salesman would attend meetings, but not regularly.

The freight rates on flooring are exactly the same as on other lumber products that we ship. We sell practically all of our maple flooring in the Middle West. Our birch flooring, however, goes to the eastern markets. We sell our maple flooring in the Middle West

because we have the advantage there on freight rates. We sell our hemlock and other woods in that territory in mixed carlots, and there is where the principal part of our business is done.

We sell to retail and wholesale dealers, but principally to retailers because it enables us to sell our stock in mixed cars. For instance, if a retailer wants 200 feet of flooring and we can sell him about 16,000 feet of other hard stock, our ability to sell the flooring is nearly as much benefit to our other business as a salesman would be. After loading up yard men with maple flooring [fol. 411] and other stuff, we do not attempt to go out and sell the consumer direct in the same communities. That has been the policy of any concern I have ever been connected with during the past 25 years, namely, to sell only to retail dealers and wholesalers. I know of no Association rule now in force, or in force at any other time, which prevents manufacturers from selling to consumers direct.

In the sale of flooring, we come in competition with the manufacturers in the Northern Peninsula of Michigan and Wisconsin, both members of the Association and non members. The non members in that territory are R. Connor Company, Marshfield, Wisconsin, Robbins Flooring Company, Rhinelander, Wisconsin and Sawyer-Goodman Company, Marinette, Wisconsin. The R. Connor Company is about 86 miles from Phillips, Wisconsin and is one of our strongest competitors because it is in the same line of trade that we are. It manufactures lumber in large quantities and sells maple flooring to the small retailer, just as we do. The R. Connor Company also own considerable stumpage.

In determining at what price we shall sell our flooring, we keep in touch with the market principally through our travelling salesman. We also take into consideration the statistics that we get from the Flooring Association and also watch the price reports. The matter of price is governed a great deal by our stock on hand. In the territory that we work there is a big demand for 1½" flooring. The Michigan manufacturers don't have that trade. We are usually oversold on the narrow face, whereas the Michigan manufacturers are usually long on it. We have to take that into consideration in [fol. 412] making our prices. We very often have to buy narrow face flooring from other manufacturers in order to take care of our trade. I do not consider that my discretion is in any wise limited in the matter of determining what prices I shall charge for our products. I am not now a party to any understanding or agreement with respect to maintaining any prices for maple, beech or birch flooring and I have never been a party to any such understanding or agreement since the organization of the present defendant Association.

There were certain so-called Minimum Price Plans in 1919. When we signed those Minimum Price Plans, we were of the opinion that they would be lived up to. We found out they weren't and that everyone sold their flooring at any price they wanted to, and we did the same. We took what we were able to get for our flooring. We learned that the Minimum Price Plan wasn't being ob-

served through our traveling salesman. He gave information that he got from his customers. If he failed to land a certain order, he would telephone the office and say that the customer had told him another mill had made a certain price. It might be an Association mill or a non member mill. If we were long on stock, or if we needed the money, which we usually did, we told him to get the order.

. In selling our merchandise, we make a notation on the invoice that the amount of the paid expense bill is to be deducted. We do not make any computation of the freight. The buyer then deducts the freight and remits to us the net proceeds. The buyer learns the amount of the freight from the expense bill that he gets from the [fol. 413] railroad company and turns in the expense bill to us as a receipt for the amount of freight deducted from the invoice. For instance, if a shipment of flooring, or a mixed carload of flooring and other lumber, is shipped by us to a buyer at Minneapolis, the buyer deducts the freight from Phillips to Minneapolis. He does not deduct the freight from Cadillac to Minneapolis. In every case the buyer takes the actual freight paid by him to the railroad company and sends in to us the paid expense bill.

In shipping to points where we are not familiar with the freight rates, we use the rate books issued by the Association. Phillips is a very small town and it is very difficult to get freight rates from the railroad agent there. In our regular territory we know what the rates are, but in shipping east or west, we use the rate book in order to ascertain the freight rates. It is impossible to get those tariffs from the railroad agent at Phillips, which is a town of 2,200 inhabitants located on the Soo Line. It would sometimes take a week to get a freight rate from the railroad agent. In shipping to points not in our regular territory, we use the freight rate in the book issued by the Association in order to compute the freight, so that we can quote a delivered price, but the buyer deducts the actual freight from Phillips, which he pays to the carrier.

Sometimes there is a difference between the rate from Phillips and the rate mentioned in the book. I know that there might be slight differences between the rates quoted in the rate book containing the average rate of freight and the actual freight from Phillips. [fol. 414] If we want business, we have to quote on that rate in order to compete with the mills that are located where the rate applies from. It is a matter of competition. We have an advantage over the Cadillac freight rate to Minneapolis. That is why we market our stuff in that territory. Our rate into Minneapolis is $11\frac{1}{2}\epsilon$ and the Cadillac rate is 27ϵ . We take advantage of our geographical situation. If we ship east, we have to absorb the difference between our rate and the Cadillac rate, or else get a higher price for our flooring. The only time we ship east is when we can't sell in our nearby territory. Our terms of sale are 2%, 15 days, 60 days net, on both flooring and other lumber products. The terms used to be 2%, 10 days. They were changed about 15 years ago, I think. I do not know of any Association rule with respect to terms of sale.

We do not allow the retail dealer any commission because we sell through travelling salesmen, which costs more than on commission. We allow some wholesalers a commission of \$1.50 to \$2.00. We are forced to do that to meet our competitors. \$1.00 was the limit of commissions until about three or four years ago. Now commissions range from \$1.50 to \$2.00. It is mostly \$2.00. We have no uniform rule with respect to commissions. We determine the matter of commissions in each particular case. I know of no Association rule limiting the amount of commissions to be allowed by members or when commissions shall be paid. I never heard of any Association rule that now requires the registration of special representatives. We never had any. We use travelling salesmen.

[fol. 415] Our production has increased very materially since we began the manufacture of flooring. We have never been a party to any understanding or agreement with respect to limiting or curtailing our production.

With respect to hazards incident to the manufacture of flooring, we have had our dry kilns burn four different times since we began the manufacture of flooring. On April 9, 1916 we lost four dry kilns, on November 16, 1916 we lost eight, on November 25, 1919 we lost four and on April 9, 1921 we lost four.

Our reason for joining the Association was that we desired to be recognized as a manufacturer of maple flooring. We found that most architects in their specifications would call for flooring that was put out by the Association. We were handicapped and for that reason we never got our production up where it should be. The benefits that we get as a member are the statistics, information with reference to past transactions and advertising. I do not know that the statistics enable us to get any higher prices, but they keep us in touch with what is going on in the market and we know what the supply is, what the sales have been, and we know what our own stock is. We take all these matters into consideration. We would not raise our price simply because someone else was getting more. The matter of price is determined by what our stock conditions are and what the demand is. We keep in touch with what R. Connor Company is getting and the Sawyer-Goodman Company is getting for flooring. Our salesman keeps in close touch with the quotations they have made. *They* is why we keep a salesman on the road.

[fol. 416] The paper you hand me is a correct statement of the wages paid by our Company since 1915 to May, 1923.

(Said statement marked Defendant's Exhibit "L" and received in evidence.)

Cross-examination.

By Mr. Fowler:

Q. You say Mr. McLurg that you consider those statistics when you go to make up prices?

A. Yes, sir.

Q. Are you the sales manager?

A. No, sir.

Q. You consider them pretty carefully don't you?

A. I don't. My sales manager watches them. I pay very little attention to the selling.

Q. You examine and consider those weekly sales reports?

A. He does, yes, sir.

Q. And they show the prices?

A. Yes, sir.

Q. At which the sales were made?

A. Yes, sir.

Q. And you regard that as of value?

A. Very valuable.

Q. And you also regard it as very valuable, the reports as to production?

A. Not so much production as I do stocks on hand.

Q. Stocks on hand.

A. I don't care so much about production as I do with what they have on hand.

Q. Why is that valuable if it does not enter into the making of the price.

A. I said it did enter into my making the price.

Q. If those statistics showed that those competitors were getting a good big high price, why you follow, don't you?

A. If our stocks are such that we can, and if they are low, we buy from them, try to find out who it is and buy some stock?

Q. But if they get a good high price you follow don't you?

A. We try to get all we can, yes, sir.

Q. Well you follow them?

[fol. 416a] A. We don't follow that as a lead.

Q. If they get a higher price than you do you try to follow them, don't you?

A. Try to get all we can for our stock.

Q. Mr. McLurg, if they are selling higher than you are, you try to follow them don't you?

A. Yes, sir.

Q. You put your price up to correspond with theirs.

A. No, we don't put it up to correspond with theirs.

Q. Just as close up as you can.

A. We try to keep in touch through our salaried salesman in making our prices and reports we get from him. Now we are way in the west, the farthest manufacturer in the west, we can't tell so much about those reports, where they are made from or where they are sold.

Q. But any way it gives the prices of every sale and gives you also the amount of stock on hand by all your competitors.

A. Yes, sir.

Q. As a matter of fact isn't that a matter that you consider more than any other one thing when you go to making your prices?

A. No, we consider more the reports from our salaried salesmen than anything else.

Q. Well of course you consider the amount of stock you have on hand.

A. Amount of stock we have on hand and the statistics, it is all taken into consideration.

Q. But the price would be controlled more by the total stock that all of you have than by what you have.

A. Our price is made more from the salesmen's report in the territory than on anything else.

Q. Well does the salesman when he reports sales from these competitors belonging to the association, does it always correspond with what you get in your reports from the Secretary?

A. No, because we run up against great competition of those who aren't members, that we know nothing about.

Q. That is some of the outsiders you run against, that you don't get reports on?

A. No, sir.

Q. So far as the members are concerned, you rely on the reports. [fol. 417] A. We do so far as we can, but we can't tell where that stuff is going or whether or not it is going into our territory. There is no way for us to know from the report, we sell in a very small territory, and we have got to take our salesman's report, we can kind of check against it, but we have so much outside competition that we rely on him more than we do anyone else.

Q. You are talking now more about since July.

A. Always.

Q. Before July you knew exactly every man that made a sale and how much he sold and the price at which he sold.

A. We did then, yes, sir.

Q. And knew his freight rate, and you could take the rate book and judge almost exactly where he had made the sale, couldn't you?

A. No, no, there was a great group there that you can't—would be pretty hard to dig out any particular place.

Q. Isn't it your judgment Mr. McLurg that by virtue of those statistics that you get more for your flooring than you otherwise would get?

A. No, I don't think so.

Q. Then what do you use it for, what do you want it for, if you don't get more money for it. What do you want them for?

A. We keep tab on the flooring.

Q. Don't it enable you to get more money, isn't that the reason you want to keep tab on it?

A. We rely more on our salesman.

Q. Does not the fact that you get all this information enable you to get more money for your flooring?

A. I don't think so.

Q. Well then what do you use it for? What is the use of it if you don't get any more money?

A. It has got a place in our business.

Q. Don't you use everything, all the information you have, for the purpose of getting more money for your flooring and that is the prime object of your business.

A. Yes, sir, get all we can.

Q. Then if this does not help you get more money why do you want it?

A. It may contribute in a way, but didn't—

Q. Well does it contribute in a way?

A. I expect it does.

[fol. 418] We sell a great deal of our flooring at Minneapolis. The Cadillac rate to Minneapolis is 27¢. The rate from Phillips is 11½¢. We do not use the Cadillac freight rates in our territory where we sell in mixed cars. If we ship east we do. Cadillac has [fol. 419] a better freight rate east than we have. About all that we ship east is clear birch flooring. About 75% of the flooring manufactured by us is maple. Of the lumber we produce maple is about 5% and birch about 40%.

Q. Now you say, Mr. McLurg, that they didn't observe this minimum price basis?

A. No, sir.

Q. You did, didn't you, for a time?

A. I tried to until I found they weren't, then I didn't.

Q. You lived faithfully up to it until you found the other fellow wasn't?

A. Yes, sir.

Q. Were you getting the statistics then?

A. Not that I remember of.

Q. You couldn't check him up, could you?

A. Yes, sir.

Q. How?

A. By our salaried salesman.

Q. That is where the salesman would inquire around, sometimes you could check him up?

A. When the salaried salesman loses an order he wants to tell me why he lost it.

Q. Can you always rely on him?

A. The man I have, yes, sir; I wouldn't keep him if I couldn't.

Q. But as these gentlemen send in their reports of sales, then it is a simple matter to check him up?

A. It is a simple matter to check him up—but right from the start they never lived up to it.

Q. You think when he filed this thing that immediately thereafter they began to be disregarded?

A. I think they thought it was for the other fellows.

Q. Really wasn't that the reason that they adopted the reporting system, so as to check them up and make them stand by it?

A. I don't know why they adopted it, but it never made them live up to anything.

[fol. 420] We made our first big purchase of stumpage in 1912 and have been acquiring stumpage ever since, up to two years ago. Some of our stumpage was bought with land and part of it was not.

I do not supervise the making of these reports to the Association. Our Company did not answer the questionnaire that was sent out on the cost of production because our flooring business is so interwoven with our other business that we can't separate it.

Redirect examination.

By Mr. Darby:

Our Company never paid any fines or penalties for not living up to any of the rules of any of the Associations. I know of no demands that were ever made on any of the other members. [fol. 421] I do not attend to the detail of selling flooring, but I am generally familiar with it. It is being handled by someone else under my direction.

WALTER L. DE WITT, being duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

I am 53 years of age and am in the lumber business. Our plant is located at Oconto, Wisconsin. I have been in the lumber business for 23 years and have had general experience in manufacturing and wholesaling lumber and lumber products. The name of my company is Holt Hardwood Company. We manufacture hardwood flooring, shoe last blocks, bowling pins and broom handles. We manufacture maple, beech, birch and oak flooring, principally maple. Our Company has been in existence since July, 1918. We joined a Maple Flooring Manufacturers Association in March, 1919 and continued to be a member of it about one year. Upon the so-called Memphis decision, we felt that perhaps the Association as it was being conducted would be declared illegal and for that reason we resigned from the Association at that time. I don't just remember when we did resume our membership. I think we resumed our membership in the old Association perhaps some time in 1921. We are members of the present Association. Subsequent to our first resignation and before resuming our membership, we received a legal opinion from Mr. Newman and resumed our membership believing that the Association was legal at that time. Of course, we knew nothing about the law [fol. 422] and had to rely upon advice of counsel. We had no intention of violating the law. On the contrary we wish to comply with it.

The Holt Hardwood Company does not own any stumpage. We buy all our rough lumber on the open market. There are a good many manufacturers of rough maple lumber and the other lumber that we use. I couldn't give an estimate of the number. We buy from probably twenty different manufacturers in Wisconsin and the Northern Peninsula of Michigan. Some of them are members of the Maple Flooring Manufacturers Association. Just at present we are not buying any lumber from members of the Maple Flooring Manufacturers Association but at times we have bought from probably three or four members of the Association. Probably not more than 5% of the rough lumber that we have used has been bought from members of the Maple Flooring Manufacturers Association. At times

I have bought lumber from the East Jordan Lumber Company, J. W. Wells Lumber Company, I. Stephenson, Trustees and from the Northwestern Cooperage & Lumber Company, who were members of the Association. I have bought rough maple lumber from firms who are not members of the Association, such as the Oconto Company, Oconto, Wisconsin, Sawyer-Goodman Company, Marinette, Wisconsin, Goodman Lumber Company, Goodman, Wisconsin, Below Lumber Company, Marinette, Wisconsin and Thompson-Wells Lumber Company, Menominee, Michigan, Von Platen-Fox Company, Iron Mountain, Michigan, Northern Saw Mill Company, Saylor, Michigan, C. H. Worcester Company, Ontonogan, Michigan, Menominee-Bay Shore Lumber Company, Soperton, Wisconsin. I could go on naming other non members from whom I have purchased rough lumber for [fol. 423] a considerable length of time. We have bought a large amount from Charles W. Fish Lumber Company of Elcho, Wisconsin and the Yawkey, Bissell Lumber Company of White Lake, Wisconsin. We have bought about 5% of the rough maple lumber that we have used from members of the defendant Association and are not buying any from them at the present time.

That would represent our experience since our Company has been manufacturing maple flooring.

We sell our flooring at all points throughout the United States and do a little export business. In the sale of our flooring, we have met various stiff competition at all times. My experience is that there is always a variation in prices and that competition is very active. I know this because we keep in touch with our trade and with the conditions in the country from reports that we receive from different representatives and from information we are able to obtain from people to whom we are selling our flooring. We get the weekly and monthly statements of the sales of flooring issued by the Association. They will show the variation. These conditions I have just described existed during 1919 and 1921.

When there was a minimum price plan or minimum price basis, certain prices were recommended but they were never observed. I know that because we found in selling our product that we were obliged to meet competition and sometimes our price was higher and sometimes our price was lower.

We have never been a party to any agreement or understanding of any kind to limit our production. We have steadily increased our [fol. 424] production since 1918, when it was between three and four million. This year it will be over eight million. We had a little falling off in 1920, as our plant was closed by the I. W. W. strike for a period of about three months. That was in the early part of 1920, beginning about May 1st and continuing until practically August 1st, 1920. There had been talk of a strike or a threat of strike for nearly a year before. Practically all the mills in Wisconsin and the Upper Peninsula of Michigan were closed down from May 1st to about August 1st, 1920. This caused a great shortage of flooring and was probably one reason why the prices fluctuated so much. Prices were then very high. There was a great variation in prices during that period. The I. W. W. strike was general among the mills in North-

ern Wisconsin and the west portion of the Upper Peninsula of Michigan.

Oconto is a town of 5,500 inhabitants located on the Chicago & Northwestern and the Chicago, Milwaukee & St. Paul Railroads. We used the freight rate books that were issued by the Associations almost entirely for securing the rate of freight in making our delivered prices. It happens that Oconto and Cadillac take practically the same rate of freight to all parts of the country with the exception of the west, and we have inquiries coming in every day from all over the United States. If we had to ask the local agent for a freight rate, in a good many instances the point would not be listed in the tariff he had on file, which would necessitate his taking up the matter with the general freight office, which would result in a delay of anywhere from two days to a week before the freight rate could be obtained. We would have to hold up our quotation to our [fol. 425] customer who demands a delivered price in nearly every instance. Consequently, the order would probably be placed elsewhere before we were able to quote a delivered price.

The average freight rate from Cadillac to thirty representative markets in the United States on flooring is 44.7¢ and the average from Oconto is 42.9¢. One cent's difference in freight per thousand feet on 13-16 x 2¼ maple flooring would be 20¢. Such a difference would not have any material effect upon the delivered price of flooring in Boston, New York, Philadelphia or any other of these thirty representative markets because it is too small to take into consideration.

I have found that these freight rate books are a great assistance to me in the conduct of our business. In the absence of the freight rate books we would have to secure the rates from the local agent or through a traffic association or install a traffic department of our own. We bill our flooring to the buyer at a net delivered price when the order is taken at a delivered price. When we invoice the flooring there is no separation of the flooring from the freight. No separate charge is made for freight as distinguished from flooring. Sometimes we prepay the freight, but not very often. When freight is not prepaid, the buyer deducts from the face of the invoice the actual freight that he pays and then deducts whatever discount is allowed and remits the balance to us by means of check or draft. The buyer deducts from the face of the invoice the actual amount of freight he pays to the railroad company.

The Court: I take it that this testimony will be given in substance by *the* every witness that is put upon the stand because that is the [fol. 426] universal practice in shipping lumber.

Mr. Darby: In view of what the Court has said, we will put on no more testimony as to this matter.

I know of no understanding or agreement whereby the different members of this Association were to sell their flooring on an f. o. b. Cadillac basis. We have no objection to selling flooring f. o. b. mill Oconto. In fact, we do so whenever requested.

I am a member of the grades committee of the present association and have never been a member of any other committee or an officer of the association. I think I attended two or three meetings in 1919 and probably not more than two or three meetings in 1921 after we resumed our membership. I don't believe I have ever attended more than two or three meetings a year.

Q. So what these people have talked about generally there, there would be a lot of it, you wouldn't know anything about?

A. Yes, sir.

[fol. 427] Q. How about the talk there at the meetings, such meetings, such meetings as you attended since the organization of the present Association, has there ever been any agreement or understanding as to curtailing or limiting production or as to future prices of maple, beech and birch flooring?

A. No, sir.

Q. I believe you have always manufactured an inch and 16th flooring, have you not?

A. Yes, sir.

Q. There has been some correspondence put in evidence here, passed among some people who manufacture that, about the prices that were to be charged on this inch and 16th flooring. I see your name was not mentioned in that list. Did you ever hear any such matters discussed at any Association meeting that you ever attended?

A. I never heard that discussed in the Association meetings, no.

Q. Have you ever been a party to any agreement with any manufacturer as to what you could sell an inch and 16th flooring?

A. No, sir.

Q. Did you know anything about these letters that have been passed between these various people about inch and 16th flooring until they were shown to you here?

A. I have heard some talk about it, I have no distinct recollection of the matter at all.

Our regular terms of sale are cash less 2% 10 days from date of shipment after freight was deducted, but those terms are varied to suit particular conditions. In fact, I am sure that there are more [fol. 428] sales that varied from the regular terms than there are that conformed with them. For instance, the New York custom has always been to discount either five or ten days after the arrival of cars and in most of the markets no payments are made until after receipt of car. We have one customer in Chicago who discounts all invoices immediately upon receipt of them. On our coast shipments we have one customer that we allow 2% 90 days after the freight is deducted. We vary our terms of sale according to our past relation with the individual buyer or according to our financial needs. Terms of sale fluctuate continually and it is a matter of compromise and adjustment. Some buyers are always wanting special terms and if they are good customers, we don't haggle over it. This has been our practice since we have been manufacturing flooring.

I knew that the freight rate books contained so-called terms of

sale. They are standard terms of sale on which practically all lumber products are handled. I do not regard the terms of sale appearing in the freight rate books as limiting my discretion or as being in any wise binding upon me. We followed those terms when our customers liked them. The present Association has no rules with respect to terms of sale.

Concerning the data in said freight rate books with reference to spreads or differentials between the different grades, sometimes we followed them and sometimes we didn't, according to whether that spread represented the actual difference in value and the difference in the cost of material. In the conduct of the flooring business, it is [fol. 429] not practicable to maintain any fixed price relation between the different woods or between the different grades or between the different thicknesses and faces. That is all governed by supply and demand and the cost of the rough material from which the article is made and the cost of producing it. The demand may be very large for one grade or one thickness or one fact at one time and very small at others. The demand for each grade or thickness is not always constant, but it is continually fluctuating. Theoretically, the value of inch and 16th flooring is supposed to be greater than 13/16ths, but at times we sell them at exactly the same price. Sometimes the inch and 16th is sold lower than the 13/16ths, at times higher. Just at the present time we are selling inch and 16th by 2¼ factory at a lower price than we are 13/16ths by 2¼ factory on account of the supply and demand. The inch and 16th is theoretically more valuable than the 13/16ths because the inch and a quarter lumber from which the inch and 16th flooring is made is nearly always higher priced than the one inch lumber from which the 13/16ths is made. We get a little more footage through the machine from the inch and 16th and the actual machine work is a little less, but the cost of the rough lumber is almost always considerably more.

The present Association has no rule with respect to maintenance of differentials or spreads between the different grades, woods, faces or thicknesses of flooring. I consider that I am at all times free to fix any price I please on my flooring.

"Q. When you receive an inquiry how do you determine what price you shall make upon your flooring?

[fol. 430] A. We keep a very close survey of our costs and we always try to sell at a price that will get us a profit. This is not always possible. We use the reports that we get from the Association as one source of information in making our prices and we try and keep in very close touch with the prices that are prevailing in the different markets. We get this information through our customers and through our representatives, and we know that we have to meet that competition and our prices are based accordingly. Of course if the items inquired for happen to be one of which we are short, oversold, why, we endeavor to get a large price or we don't sell. On the other hand, if our warehouse space is filled up with that particular item, we try to get the order, we will make a low

price, try to make a little lower price than is prevailing, in order to move that particular stock.

Q. Do you know of any understanding or agreement among the members of this Association with respect to what prices shall be charged?

A. No, sir.

Q. Do you consider that your discretion is in any wise limited with respect to the price that you shall fix for your flooring?

A. No, sir.

Q. Would you surrender that discretion or the discretion that is placed upon you as the Vice President and General Manager of your company?

A. No, sir.

Q. Going into this matter of the weekly and monthly statistics. Suppose now that you had a small amount of say Number One on [fol. 431] hand and you observed that the unfilled orders for that item were getting a larger price than you were getting, you would raise your price, wouldn't you?

A. Yes, sir.

Q. Suppose however, that lower prices were obtained on factory for instance, and you were oversold on factory?

A. We wouldn't cut our price.

Q. Suppose however lower prices appeared in these weekly sales report- than you had been getting and you had a surplus of the same item, what would you do?

A. I have already stated in my testimony that we would cut the price on the stuff to move it.

Q. As a matter of fact this matter of statistics works both ways?

A. Yes, sir.

Q. You see what the demand is and the supply is, you see what it is necessary for you to do in order to move your stock, and you act accordingly?

A. Yes, sir. I think that the price of flooring or any other product is regulated almost entirely by the supply and demand.

Q. In other words, the information that you gather from those statistics will cause you to lower your price in the actual conduct of business as often as to cause you to increase it?

A. It would, according to the way you have stated it. If we say that there was a large amount of an item on hand and that the other members were selling at a lower price, naturally we would reduce our price.

Q. How about these statistics enabling a manufacturer to select [fol. 432] rough lumber that would produce a greater per cent of one grade than another?

A. They are very valuable to a manufacturer, enables him to handle his business in a practical business-like manner and efficiently. If we endeavor to always keep our stocks balanced so that we will have the flooring that is in demand,—if we find by those statistics and other information that there is a large demand for factory flooring, or number one, we put into our dry kilns a lower grade lumber.

Q. What grade would that be?

A. That would be the 3A and the Number 2. On the other hand, if the demand appears to be for clear——

Q. Now wait. State whether or not that 3A and the Number Two would produce a higher percentage of factory or Number One than the higher grades that are used of the rough lumber used to manufacture flooring.

A. The 3A is the lowest grade that we use for manufacturing and the Number 2 the next and naturally they produce more of the lower grade flooring.

Q. They produce some clear and some Number One, but the greater percentage of factory or of Number One than the Number One Common?

A. Yes, sir, you get some clear flooring out of all lumber, no matter what the grade is you will get some clear flooring by cutting it up in short pieces."

The documents you hand me are letters written and received in the ordinary course of business.

[fol 433] Said letters marked Defendants' Exhibits, M, N, N 1, N 2, N 3, O, O 1, O 2 and O 3, Respectively, admitted into evidence, and are as follows:

DEFENDANTS' EXHIBIT M

(Letter March 5, 1921, Ex. M)

"Mar. 5, 1921.

"Mr. Fred Sullivan, Buffalo, N. Y.

DEAR FRED: I am anxious to get a line on the prices asked for maple flooring by the different manufacturers in lower Michigan, and if it is not too much trouble, will you kindly write W. D. Young and Co., Bay City, Mich., and ask for price on $\frac{1}{2}$ car 13/16 x 2 $\frac{1}{4}$ " fc. Clear Maple Flooring, and $\frac{1}{2}$ car 13/16 x 2 $\frac{1}{4}$ " No. 1 maple flooring, delivered Buffalo. Write this same letter to the Bigelow-Copper Co., Bay City, Mich. Ask the Strable Lumber and Salt Co., Saginaw, Mich. for price on one car 13/16 x 2 $\frac{1}{4}$ " fc. factory maple flooring, and Wm. Horner, Reed City, Mich., for price on one car 13/16ths x 3 $\frac{1}{2}$ " fc. jointed factory maple flooring. Also Cobb and Mitchell, of Cadillac, Mich., and Cummer Diggins Co., Cadillac, Mich., for price on one-half car each 13/16 x 2 $\frac{1}{4}$ " fc. clear and number one.

Kerry and Hanson Flooring Co., Grayling, Mich. and Welsh and Kerry Co., Reed City, Mich., for price on one-half car 13/16ths x 2 $\frac{1}{4}$ inch clear and number 1 and send these replies to me.

Thanking you for your trouble and with kind regards, I remain,
Very truly yours, ———"

Def. Ex. N reads as follows:

DEFENDANTS' EXHIBIT N

"Buffalo, N. Y., March 14, 1921.

"Holt Hardwood Company, Oconto, Wis.

GENTLEMEN:

Attention Mr. W. L. De Witt

We inclose herewith letters from the following in regard to maple flooring:

Strable Lumber & Salt Co., Saginaw, Mich.

Cummer-Diggins Co., Cadillac, Mich.

Kerry and Hanson Flg. Co., Grayling, Mich.

Respectfully, T. Sullivan & Company."

[fol. 434] Def. Ex. N-1, reads as follows:

"Cadillac, Michigan, March 11, 1921.

Dictated by J. L. Colby.

T. Sullivan & Co., Niagara & Arthur Sts., Buffalo, N. Y.

GENTLEMEN: Answering your inquiry of the 8th, we are pleased to advise that we could make immediate shipment and quote f. o. b. car Buffalo, N. Y., as follows:

1/2 car 13/16 x 2 1/4" face Clear Maple Flooring, \$97.75 per M ft.

" " " x 2 1/4" No. 1, Maple Flooring, 80.75 Do.

Thanking you for the inquiry and hoping to be favored with your order, we remain,

Yours very truly, Cummer-Diggins Co."

Def. Ex. N-2, reads:

"Saginaw, Mich., March 11th, 1921.

T. Sullivan & Co., Buffalo, N. Y.

GENTLEMEN: Responding to your inquiry of March 8th we will deliver:

13/16 x 2 1/4 Factory Maple Flooring @ \$50.00 per M f. o. b. Buffalo, N. Y. rate. We can allow you our special commission of \$2.00 per M ft. from this price if you are able to send us the order. We can give you immediate shipment.

Yours very truly, Strable Lumber & Salt Company, by M. H. Miller."

[fol. 435] Def. Ex. N-3, reads:

"Grayling, Michigan, March 11, 1921.

T. Sullivan & Co., Niagara and Arthur Sts., Buffalo, N. Y.

GENTLEMEN: (Printed) Quotations subject to change without notice and previous sale all contracts contingent upon strikes, fires or other unavoidable causes beyond our control.

In answer to your postal card inquiry of March 9th, we will quote you as follows, f. o. b. cars Buffalo, in c/l lots:

One-half car	13/16 x 2 1/4"	Clear Maple Flooring	at \$106.00 per M.
do.	do.	#1	do. 86.00 " "
do.	13/16 x 2"	Clear	do. 101.00 " "
do.	do.	#1	do. 81.00 " "

At the present time, we have some very nice stock on hand in all items listed and can give you service on shipments, both as to prompt loading at the mill and having shipments traced thru to insure prompt delivery at destination.

Prices quoted include commission of \$1.50 per M, in addition to cash discount of 2%-15, 1%-30, net 60 days from invoice date, after deducting the freight, which is net, buyer to pay the war tax on freight.

The inquiry is appreciated and we will be glad to have your order, which will have our prompt and careful attention.

This quotation is made subject to prior sale of stock.

Yours very truly, Kerry & Hanson Flooring Co., by Emil Giegling. EOG/WBH.

Mr. Darby: Your Honor, I will not take the time to read these other letters. I will ask the reporter to copy them in the record.

[fol. 436] Def. Ex. O, reads:

"Buffalo, N. Y., March 15, 1921

Holt Hardwood Company, Oconto, Wisc.

DEAR WALTER:

Attention Mr. W. L. De Witt

Further in regard to the maple flooring: we inclose a letter received this morning from Trotter-Kelleran Lumber Company of this City. They quote on the Bigelow Cooper stock, and as you will note, the price is lower than Bigelow-Cooper's original price.

Also this morning, the National Lumber Company of this city quoted us by phone on the Wm. Horner stock, \$80. for #1 and \$50. for Factory, f. o. b. Buffalo.

Sincerely, Fred M. Sullivan."

Def. Ex. O-1, reads:

"Buffalo, N. Y., March 14, 1921.

T. Sullivan & Company, Buffalo, N. Y.

GENTLEMEN: Confirming telephone conversation with you this morning we are pleased to state we can revise Bigelow-Cooper Company's prices to you as follows:

13/16 x 2 1/4" face Clear Maple Flooring.....	\$95.75
" " No. 1 "	75.75

The above prices are f. o. b. cars Buffalo, New York, rate of freight and we trust with this reduction in price you will be able to place your order for this stock with us.

We are the exclusive agents of the Bigelow Cooper Company in this territory and would certainly appreciate it if you would send us your inquiries for this stock direct.

Yours very truly, Trotter-Kelleran Lumber Company, by A. B. Danihy."

[fol. 437] Def. Ex. O-2, reads as follows:

"Bay City, Mich., Mar. 10, 1921.

T. Sullivan & Co., Buffalo, N. Y.

GENTLEMEN: Your favor of the 8th was received and contents. Complying with your request we quote as follows:

1/2 car 13/16 x 2" face clear maple flooring.....	\$100.75 per M
" " " x 2 1/4" face #1 "	85.75 " "

Delivered F. O. B. cars on a Boston rate, less \$1.50 per M commission to you. We could not furnish the 2 1/4" clear promptly, as we are shut down and we haven't it in stock. The flooring would be kiln dried, matched, and matched, hollow backed, steel polished and bundled.

Hoping to hear favorably, we remain,

Yours very truly, W. D. Young & Co., by Whedon."

Def. Ex. O-3, reads as follows:

"Bay City, Mich., March 10, 1921.

T. Sullivan & Co., Buffalo, N. Y.

GENTLEMEN: In response to your inquiry of the 8th for Maple Flooring, we are pleased to quote as follows on the items specified delivered f. o. b. cars, Buffalo rate of freight.

13/16 x 2 1/4" Face Clear.....	\$105.75
No. 1.....	85.75

These prices include your commission of \$1.50 per M.

We are prepared to furnish stock for prompt shipment and can assure you strictly high grade carefully manufactured flooring, in accordance with the Maple Flooring Association rules.

Awaiting your order with pleasure, we beg to remain,

Yours very truly, The Bigelow Cooper Company. J. E. Dewey, Secretary."

[fol. 438] The letter I wrote to Mr. Sullivan in Buffalo is self-explanatory. We wanted to know what the prevailing prices were so that we might intelligently meet competition. I don't remember whether at that time we were getting weekly sales reports and the other statistical data from the Secretary of the Association. As I stated earlier in my testimony, we resigned some time in Mach and I do not remember when we resumed our membership. My purpose was to inform myself what flooring was being offered at in those markets at those times, and I wrote the letter in order to find out. That is done occasionally by manufacturers or lumber people in general in order to get a line on what their competitors are doing.

The files and correspondence that you show me were sent out or received by us in the ordinary course of business. The printed list you show me with numerous items of flooring of all kinds, oak, beech, birch, maple, etc. with prices to the right in typewriting with the statement at the bottom that the prices are f. o. b. Oconto, was issued by us. We put out generally monthly stock lists without the prices attached and attach the prices only when someone asks for them.

(Said list marked Defendants' Exhibit P and received in evidence.)

On or about the 15th of the month, we get from our accountant the same kind of reports that are furnished most concerns by public auditors at the end of the year's business. The purpose of getting out these reports monthly is to keep in close touch with our business and with costs.

[fol. 439] "Q. Here is a letter which has been marked Defendant's Exhibit Q, addressed to about twenty different firms at different places in Michigan and Wisconsin, dated July 18, 1921. It is a circular letter. "Gentlemen: We have the following maple flooring in our warehouse that we wish to move, on which we can make you special prices now delivered to your cards," and then follows a long list of flooring there. "We hope that you will be able to send as an order for some of this stock. We can ship all kinds of retail yard stock, including lath, and shingles and flooring." Explain what was the occasion of sending out that broadcast quotation?

A. The reason we sent that out was because we were long on those items and the demand seemed to be very poor, and we wished to get rid of it.

Q. What did you do in order to get rid of it?

A. We reduced the prices.

Q. Made special price reductions in order to move it?

A. Yes, sir.

Q. Does that happen quite frequently in the conduct of your business, or otherwise?

A. It does.

Q. And that is one of the means you take in order to move your stock?

A. Yes, sir.

(Defendants' Exhibit Q was received in evidence.)

Mr. Darby: Letter from P. W. Wood Lumber Corporation, Wholesale and Retail Lumber and Cement, Garden Street, Worcester, Mass., May 19, 1921, addressed to Holt Hardwood Company, Oconto, Wisconsin (Defendants' Exhibit R-3):

'GENTLEMEN: We have yours of recent date regarding car of flooring and would say that we have bought a car of flooring of a [fol. 440] grade equal to yours for \$94.00 per M', for a clear grade.

Of course you realize that with prices dropping as they have been for the last few months, we have got to look ahead in order to protect our interests, as we have to drop our retail prices of flooring to follow the market.

We have a hunch that the price of clear hardwood flooring will stabilize between \$70.00 and \$80.00 per M', and as we have many houses under process of construction, we feel that we shall need several cars of flooring, but on account of the condition of the market, we shall buy from hand to mouth in order to protect ourselves and customers.

We have had some criticism from some of our customers lately about the length of your floor and would like to inquire if it would be possible to make the average lengths somewhat longer. In about another few weeks we shall again inquire from you the prices of flooring and will be governed largely by the prices.

It may interest you to know that we consider the quality and manufacture of your flooring good, but as above stated, the lengths are short.'

On the back of that letter is the answer of the Holt Hardwood Company, dated May 23, 1921, addressed to P. W. Wood Lumber Corporation, Worcester, Mass. 'Gentlemen: We have your letter of May 19th and note what you say in regard to the price which you paid for flooring, also that you expect the price on Clear hardwood flooring to stabilize between \$70.00 and \$80.00.

[fol. 441] 'Unless we are greatly mistaken, the price is going to stabilize higher than it is at the present time. The flooring mills have all been running at a loss for the past six months and they cannot continue to do this indefinitely.

'Even if they shrink the price of the lumber that they have on hand to the present market price of rough lumber, they cannot pro-

duce the flooring at a profit selling it at the present price. We really believe that the market is already seabilized for the next sixty days or until August 1st. We have revised our prices since we quoted you last, and the present price delivered, subject to your commission of \$2.00 per M on both Birch and Maple is as follows:

13/16 x 2¼" Clear.....	\$99.50 per M
" x 2¼" #1	74.50 per M
" x 2¼" Factory.....	39.50 per M

And it is our advice that you cover your requirements now, either by purchasing from us at the above prices, or if you can buy more of the \$94.00 Clear grade, that you do so, as we are positive that prices will be higher before they are lower. We are willing to guarantee the prices quoted against a decline up to August 1st, and as stated in our former letter, on Birch we can sort the Red out for you without any additional charge.

'Your complaint is the first one that we have ever had on the average length of our Clear flooring. Of course we put in the 20% under 4 ft. allowed by the Association rules of grading, but the balance of the stock is Unselected for length and generally runs to [fol. 442] very good average. We have appreciated the business that you have sent us, and hope that you can see your way clear to let us have some more business in the future.'

Letter of May 26, 1921, P. W. Wood Lumber Corporation of Worcester, Massachusetts, to Holt Hardwood Company, Oconto, Wisconsin (Defendants' Exhibit R-2):

"GENTLEMEN: Yours of the 23rd at hand. Your price for clear birch of \$99.50 per M' seems to be higher than what we can buy the Horner floor and the Beaver Brand floor"—

Q. The Seaman-Kent Company manufacture the Beaver?

A. The Seaman-Kent Company, of Toronto, manufacture the Beaver Brand Flooring.

Q. And you say that is a brand manufactured in Canada?

A. In Canada.

Mr. Darby (resuming reading):

—"and an excellent floor which is made in Maine, all of which we can buy for \$94.00 per M', with \$72.50 per M' for the #1 Horner, we not having heard the prices for #1 of the other two brands of floor.

"We are willing to give you an order for a car of 2¼" clear birch at \$94.00 per M', subject to our commission of \$2.00, and you to select and bundle separately the red birch, and we are willing to do this with the understanding that you will protect us on the price until August 1st." Then there is some further talk there.

Answer of the Holt Hardwood Company of May 28, 1921:

"We have your letter of May 26th and note fully what you say in regard to the prices at which you are offered flooring from Seaman, Kent Company and Horner, and while we have appreciated the [fol. 443] business you sent us, it is not good business policy for us to make a price that we know is under the cost of production. We have not figured on making money this year, but we do wish to break even on what flooring we sell, and the very lowest price that we can produce it is \$99.50 for the Clear Birch or Maple, and \$74.50 for the #1 Birch or Maple, and we would be willing to bundle the Red separate in the *Clerk*, and allow you \$2.00 per M commission. If Horner makes you a lower price than this at any time between June 1st and August 1st, we will rebate the difference to you. We know that Seaman, Kent Company make excellent flooring, but we have always felt that we make better flooring than Horner does."

Letter of June 2, 1921, from the P. W. Wood Lumber Corporation to the Holt Hardwood Company (Defendants' Exhibit R-1):

"We have yours of the 28th Inst. and note your remarks.

"Amongst other things you say, 'If Horner makes you a lower price than this between June 1st and August 1st, we will rebate the difference to you.'"

"The writer had in his hand, dated June 1st, from the Blanchard Lumber Co. of Boston, a letter which reads as follows:

'We are pleased to offer you a carload of 2¼" clear birch at \$94.00 per M'. We thank you very kindly for this inquiry and would be pleased to have your order. We would give you a giltedge lot of stuff, same as shipped you before. We can give you this stock from either mill that you prefer, Seaman, Kent Company or William Horner of Reed City.'

[fol. 444] "If you care to ship us a car of 2¼" made up as follows you may do so, 18,000' of 2¼" clear birch, and 5,000 of 2¼" clear maple, the red birch to be bundled separately, price of \$94.00 per M', subject to our commission.

"As previously stated, we also have in line, a mill which manufacturers as good a floor as is made anywhere, which is located in Maine, which also prices its clear floor at \$94.00 per M' and we now have some of it in our sheds, and it has given the best of satisfaction. Please let us know about this by return mail, as we wish to definitely place the order."

Letter of June 6, 1921, from the Holt Hardwood Company to P. W. Wood Lumber Company (Defendants' Exhibit R):

"We have your letter of June 2nd and note what you say in regard to flooring. We appreciate very much your offer to allow us to ship you the Clear flooring in competition with the Eastern mills, but we are sorry to advise that we cannot change the price we have already named you. We are receiving all of the Clear flooring busi-

ness that we can take care of on a basis of \$99.50 Boston, and it is our intention to increase the price on Clear instead of decreasing it."

Letter of June 8, 1921, from the P. W. Wood Lumber Corporation to the Holt Hardwood Company:

"We have your letter of June 6th and note what you say. [fol. 445] "We are in receipt of prices this morning from the Seaman-Kent Co. of \$90.00 for clear birth and \$68.00 for #1. However, we do not like their maple, and we are sending you an order for one-half car of clear maple and one-half car of clear birth.

"Please understand that we are paying you \$5.00 to \$9.00 more for this stock than we can buy it elsewhere, and trust that on this account you can give us especially lengthy floor."

Letter dated June 11, 1921, Holt Hardwood Company, Oconto, Wisconsin, to P. W. Wood Lumber Corporation, Worcester, Massachusetts, reading as follows:

"GENTLEMEN: We have your letter of June 8th in which you enclose your order #3309, and are pleased to enter same for prompt shipment, and will do our best to give you an especially nice car in view of the consideration which you are giving us. We have entered the order as follows:

Ship to the P. W. Wood Lumber Corp., Worcester, Mass., B. & M. Delivery—

15 M ft. 13/16 x 2 1/4" Clear Birch Flg.\$97.50 per M

The Red Birch to be bundled separate from the Unselected Birch.

10 M ft. 13/16 x 2 1/4" Clear Maple Flg.\$97.50 per M

F. O. B. Boston, net to you.

We will give this order our very best attention. Thanking you, we remain."

I will offer those letters in evidence as Exhibit R.

(Letters referred to marked Defendant's Exhibit R, R-1, R-2, R-3, and received in evidence.)

The reporter will copy into the record the communication from the Niccola Lumber Company, Wholesale Lumber, under date of July 20, 1923, in which they ask for prices etc. and the answer of the Holt Manufacturing Company under date of July 25, 1923, which is attached.

DEFENDANTS' EXHIBIT U-13

"The Nicola Lumber Company, Pittsburgh, Pa.

July 20, 1923.

[fol. 446] Holt Hardwood Co., Oconto, Wis.

GENTLEMEN: Acknowledging your letter of 17th, we note what you say in reference to the machines you use, and feel this would be a very satisfactory arrangement.

[fol. 447] 'We handle large amounts of Oak Flooring made on the disc machine and have been desirous of establishing a reliable source of supply for Maple Flooring made on the disc machines.

'Would be glad to have you send us samples of your stock so that we may keep same in our office to show to the trade. Would also like to have your lowest price delivered Pittsburgh rate of freight both in carloads and less than carloads. Also advise your very best wholesale concession, we to carry the accounts and discount the bills.

'If you have a rate sheet covering rates to the different parts of this State, we would be glad to have same as we cover a considerable amount of territory and have to quote on a variety of deliveries.

Yours very truly, The Nicola Lumber Company. A. D. Knapp, Vice President." AdK L.

DEFENDANTS' EXHIBIT- U-14 AND U-15

"July 25, 1923.

The Nicola Lumber Co., Pittsburgh, Pa.

"GENTLEMEN: We are in receipt of your letter of the 20th and are pleased to note that you would like to make some arrangement with us for the handling of our flooring out of Pittsburgh. Complying with your request, we are sending you under separate cover [fol. 448] samples of the different dimension flooring which we get out to show the mill work.

"Our prices on Maple Flooring delivered Pittsburgh rate of freight are as follows:

13-16 x 1 1-2" fc.	Clear	Maple	Flg.	\$95.00 per M
" 2	"	"	"	100.00 "
" 2-1-4 fc.	"	"	"	105.00 "
13-16 x 3 1-4" fc.	Clear	Maple	Flg.	90.75 "
" 1-1-2 fc. #1	"	"	"	83.00 "
" 2 #1	"	"	"	90.00 "
" 2 1-4	"	"	"	95.00 "
" 3 1-4	"	"	"	85.75 "
" 1 1-2	Factory	"	"	35.00 "
" 2	"	"	"	45.00 "
" 2 1-4	"	"	"	55.00 "
" 3 1-4	"	"	"	55.75 "

'At the present time we are selling 17-16 flooring on the same basis as the 13-16, but this figure varies, and we would prefer that you send us a special inquiry so that we can figure out the best price that we can make to you. This also applies to the 3½" fc. Jointed stock. We do not have a rate sheet covering rates to the different parts of your State, but if you can give us a list of cities from which your inquiries come, we will in turn give you the amounts to add or subtract from the Pittsburgh price. The maximum commission that we can allow is \$2.50 per M providing that you will carry the accounts and discount the bills.

'A matter of which may be of some interest to you and might help in getting some business, is that we manufacture in the neighborhood of 500,000 or 600,000 ft. of Oak flooring every year. This flooring is made from the best Northern Wisconsin Oak, and we [fol. 449] have not made a practice of selecting the stock for color, as we have found that we can sell everything we can make in the Plain Red variety. We manufacture both 3-8 and 13-16, and our Oak grades are maintained according to the rules of the Oak Flooring Manufacturers Association, although we are not members of the Association. Our superintendent, Mr. W. G. Kilborn, was associated for some time with William Ritter and other Southern concerns and knows the Oak flooring game thoroughly, so that we feel that we can put out Oak flooring which is satisfactory to the trade, and so far we have had no complaints. The Wisconsin Oak is of a much closer and firmer texture than the Southern Oak, and while it naturally has a little different figure, we have found it to be a very good seller especially in the Chicago market. Our prices on Clear, Select and Factory grade Oak are the same as the Maple prices. You will note that we omitted the #1 Common grade of oak flooring, but our Factory grade of Oak carries everything below the Select, giving an exceptionally fine lot of flooring in the third grade when the price is considered.

'We also can furnish Beech and Birch flooring which is equal in manufacture, grade, and quality to our Maple flooring, and our prices on the Clear and #1 grades are \$10.00 below the Maple all the way through. We hope that you will be interested in the foregoing, and that we may be able to get together with a considerable [fol. 450] volume of business to our mutual benefit.

Very truly yours, Holt Hardwood Company.' CFD—IH.

Q. Your statement there that the inch and one sixteenth, that the price relation between the one inch and one sixteenth and the 13-16ths varies, is in accordance with your testimony on the stand this morning, and in accordance with the facts as you found them?

A. Yes, sir.

Q. You state that the highest commission you could allow is two and a half dollars per thousand. What did you mean by that?

A. We meant that was all we could afford to give the man.

Q. Is that any association rule or anything? Did you refer to any association rule then, or did you consider that as much as you could allow yourself?

A. We considered that as much as we could allow.

Mr. Darby: Another letter under date of January 14, 1922, in answer to an inquiry of Charles Horn Lumber Company, Chicago, Illinois, under date of January 13th, 1922, in which quotations were asked and the quotations are given, which will be quite interesting to compare with the Chicago quotations, the quotations of other manufacturers at Chicago as shown in their depositions, in which he states the inch and sixteenth flooring is five dollars over the 13-16ths. 'We can allow you a commission of \$2.00 per M on these [fol. 451] prices.'

Letter from the Holt Hardwood Company to Charles Horn Lumber Company under date of May 23, 1922:

'Confirming our quotations made over the long distance 'phone this morning we are pleased to give you the following price list on Maple Flooring f. o. b. Oconto,' and then in the letter it is stated that the inch and a sixteenth flooring adds five dollars to the 13-16th 'in both Clear and Factory grades and in the No. 1 Clear at \$10.00 for jointed flooring in both thicknesses add \$5.00 to the Tongued and Grooved price.'

Quotation made by Holt Hardwood Company in a letter of April 21, 1922, addressed to Charles Horn Lumber Company, Chicago, Illinois, in answer to an inquiry under date of April 24, 1922; also the letter on the back from the Holt Hardwood Lumber Company under date of April 25, 1922, addressed to the Charles Horn Lumber Company. This latter letter relates to the inch and 16th:

'In reply to your letter of the 24th., wish to advise that our prices on 1-1-16th maple flg. are \$10.00 over those on 13-16 Maple Flooring and the jointed flooring cost \$3.00 per M more than the tongued and grooved.

Yours truly, Holt Hardwood Company.'

Letter of November 13, 1922, addressed by the Holt Hardwood Lumber Company, giving prices to the Falls Lumber & Fuel Company, Oconto Falls, Wisconsin.

[fol. 452] Q. How far, Mr. De Witt, is Oconto Falls from Oconto, Wisconsin?

A. About 12 miles.

Q. And this letter reads in part as follows: 'In reply to your letter of the 8th, we are pleased to advise that we are quoting the following prices on Maple flooring at the present time f. o. b. Oconto.' Letter of January 6, 1922, addressed to O. D. Haskett Lumber Company, Indianapolis, Indiana: Gentlemen: Your inquiry of the 4th has come to us through the Maple Flooring Manufacturers Association, and we are pleased to offer you the following stock for prompt shipment: Then the prices are quoted. 'Delivered In-

dianapolis, allowing you \$1.50 per M commission.' You received various communications from the Secretary of the Association from time to time did you not, stating that certain persons or firms or corporations in different parts of the United States had forwarded to the Secretary of the Association an inquiry for flooring?

A. Yes, sir.

Mr. Darby: Letter under date of November 22, 1921, addressed to Dan Klein & Son, Atlanta, Ga., a letter in response to Mr. Klein in this case, allowing one dollar and a half commission.

A letter addressed to the Nicola Lumber Company under date of June 27, 1922, in response to their inquiry, where the quotation includes a commission of two dollars per thousand.

[fol. 453] Now here is a letter addressed to the Maple Flooring Manufacturers Association by the Holt Hardwood Company under date of April 16, 1923, as follows:

DEFENDANT'S EXHIBIT U-12

'In the fall of 1922 we sold the Hunter Lumber Company, of Tolono, Illinois, a car of factory flooring, and April 7th this year we had a complaint from them on the flooring, and we were very much surprised to find that this flooring was for the Tolono High School. We immediately wrote the Hunter Lumber Company and told them that someone had made a serious error in specifying Factory Flooring for a high school job. We told them that the flooring was absolutely unsuited for this purpose and advised them to return the car of flooring to us and we would reimburse them for the freight and any other expense they might have in connection with the deal, and that they place an order with us for some other good flooring manufacturer for either No. 1 or Clear Flooring to replace it. Under date of April 13th we had a letter from them advising that the contractor upon further investigation had decided to use the Factory Flooring in the high school job.

'We feel positive that this is going to be a 'blackeye' for the Maple Flooring Association, and we feel that you should send someone to Tolono and investigate this matter, and try to straighten it out.

Very truly yours, Holt Hardwood Company.'

[fol. 454] I wrote the letter last above quoted in order to benefit the maple flooring industry. If a low grade of flooring was put into a public building, where I know it would not give satisfaction, it would hurt the industry, and for that reason we were perfectly willing to suffer some loss ourselves for the benefit of the industry at large. That is typical of the activities carried on by the Association. We want to protect the Association grade and protect the maple flooring industry so far as we possibly can do so.

I personally have derived benefits from the exchange of information with respect to manufacturing costs from different members of the Association. This has helped me to reduce my own costs and

enabled some other members to reduce their costs of manufacturing maple flooring.

Mr. Darby: I read a letter from the Kneeland-Bigelow Company under date of August 13, 1923, addressed to the Holt Lumber Company, Oconto, Wisconsin (Defendant's Exhibit U-16):

'We will appreciate it very much if you will advise us what your cost for racking, bundling and tying your hardwood flooring is. Ours for last week was \$2.08 and we think this entirely too much, and will certainly appreciate any accurate information on the subject you can give us.

'Thanking you in advance for your reply, we are.'

That is the Kneeland-Bigelow Company of Bay City, Michigan, a member of this Association.

The answer of the Holt Hardwood Company dated August--and [fol. 455] the date has been punched out--addressed to Charles A. Bigelow, Bay City, Michigan (Defendants' Exhibit U-17): 'Dear Sir: Your letter of the 13th to the Holt Lumber Company was referred to us for reply as we and not the Holt Lumber Company manufacture the flooring. For the period from January 1st to July 1st, 1923, it costs us 97.3¢ per M ft. to rack, bundle, and tie our hardwood flooring.'

The Holt Hardwood Company has no financial or other interest in the Holt Lumber Company, but they turned over the letter to us.

The matter of costs of manufacturing and marketing flooring has been given a great deal of attention by the Association. They send out the average results of test runs every so often and manufacturing costs are discussed quite frequently at Association meetings.

'Q. Now will you state Mr. De Witt what you consider the advantages of being a member of this Association?

A. Well one of the big advantages is the statistical reports that we get; it enables us to find out what the market is doing, and as I testified before on that, then we can put the proper grade of lumber into our mills to produce the grade of flooring that is demanded by the market, and it is not only an advantage to the manufacturers, but it is also an advantage to the consumer. If we did not do that there would be times when there would be a great shortage of some particular kind of flooring, naturally the price of that would be high and the consumer would suffer, but from the fact that we have that information it gives us a chance to keep our stock pretty well balanced with the requirements of the market; also that same report gives us the prices being obtained by other members of the association, although that information is generally about two weeks old when we get it, it is valuable to us. The standardization has been a very valuable thing.

Q. Now you spoke about that, do architects generally specify flooring manufactured according to the Maple Flooring Association rules?

A. As I understand it, wherever maple flooring is specified——

Mr. Fowler: Your Honor, that has been gone over by witnesses a dozen times if not two dozen times, a repetition of the same thing, and it is a waste of time. There will be no question but that architects require that and that that is what they ask for, and there will be no testimony to the contrary. It is unnecessary to repeat that so often.

Mr. Darby: Well Mr. Fowler, you allege that these standardization rules violate the Anti-Trust Act. If you will withdraw that charge——

Mr. Fowler: That is a certain line of evidence here that they have gone over and over, and I don't see any necessity for going over it so often, and especially that particular line of evidence, that we will not introduce proof to the contrary and there will be none so far as the standardization is concerned. I am not eliminating anything so far as the charge is concerned.

Mr. Darby: The Court suggested he would be interested in the subject of the benefits obtained, and I intend, subject to the ruling of the Court, to go into the matter of the benefits and advantages, fully.

The Court: Proceed.

[fol. 457] Q. Go ahead Mr. De Witt.

A. My experience, wherever maple flooring is specified on a particular job, is that the architect always specified using the grade according to the rules of the Maple Flooring Manufacturers Association, and if it were not for those rules I don't know what we would do, and no one would know what they would get when they bought it for clear or No. 1 flooring, if it were not for these rules. Then I can give a concrete instance of the standardization right now, a large bank building constructed in Chicago, taking from six hundred to eight hundred thousand feet 13-16 x 2 inch maple flooring. No one manufacturer could furnish enough to finish the job, so with the standard thickness and the standard width and standard grades, they were able to get that flooring for that building from the various manufacturers, both members and non members of the Association. We ourselves are furnishing two hundred thousand feet of that flooring, it can be laid on a separate floor or it can be all put right in on any one floor without any segregation whatever.

Q. What non member furnished that?

A. I don't know, I say it can be furnished. I don't know who the others are that are furnishing; I know we had an opportunity to bid on the entire job and could not do it.

Q. All you know is that you have a contract for two hundred and fifty thousand feet.

A. Two hundred thousand, and I know it is going into that building, and I know somebody else, lots of other people, are going to have the balance of the contract.

Q. What about the re-inspection service maintained by the Association, do you consider that an advantage or a disadvantage?

A. We would be in continual litigation I believe if it were not for that reinspection service. The flooring is sold according to [fol. 458] those grades, and if there is any complaint the official inspector goes and reinspects the flooring.

Q. That is the flooring bought by the purchaser?

A. Under those rules, and if there is anything wrong with the flooring the manufacturers make it right. If the flooring is all right the purchaser pays for it, and there is no trouble at all. It is simply the expense of the inspection.

The Court: Now how many changes have been made in either grade or size since January 1st, 1922?

A. No changes whatever in the rules sir.

The Court: One of the chief values is that there shall not be changes, isn't it?

A. Well, it is a good thing I believe, when you get a good set of rules, to keep them in force and not continue to change them, because if—

The Court: Continuous changes would necessarily involve confusion and rearrangement and readjustment of stocks on hand and everything else, wouldn't it?

A. Yes.

Q. How about the visit of the man to your plant, by the official inspector of the Association, to look over your grading and your machine work, and to instruct your employes in keeping your product up to the Association standards?

A. We consider that very valuable to us.

Q. They have made numerous visits to your plant have they not?

A. Yes, sir.

Q. How about the matter of traffic service or freight rates, the freight rate books and so forth that you have received?

A. That is very valuable to us, and also the information we get from the traffic department upon specific inquiry upon matters pertaining to traffic.

Q. You write in to the Secretary and he assists you in getting that information, is that it?

A. Yes, sir.

Q. And I wish you would state briefly to the court as to the field representative's work, the work that is done by Mr. Robertson, the official field representative of the Association.

A. Well he is what we call our "missionary," that is what I call him anyway; he visits the architects all over the country and consults with them as regards the building conditions in their territories and the prospective—

The Court: I am very glad you used that word, because it was running through my mind all yesterday afternoon, when I was listening to the witnesses, that the principal business of this association was to be a home missionary.

A. He consults with architects and tries to induce them to use our product in buildings where it is possible, tries to show them the benefit of using that material in the place of other.

Q. And on the different grades, does he tell them where one grade is satisfactory and the other one is not?

A. Just as we were doing, just the same as in the Tolona high school job, where I tried to make them understand that Factory flooring was not suitable for that building, that is one of Mr. Robertson's jobs, and he keeps us well informed of the building prospects over the country. He really is a missionary, that is what he is, trying to introduce the right flooring into the proper buildings.

Q. And to advise the members of the building conditions and operations in different parts of the country?

A. Yes, sir.

[fol. 460] Q. And he occasionally sends in the name of some lumber dealer whom you get in touch with if you happen to have your flooring carried in that district, etc.

A. Very often.

Q. And the advertising, state whether or not you have considered that a benefit? The advertising campaign that the association has carried on.

A. It is a great benefit to us, it promotes the use of flooring. I had one of our dealers recently ask us to furnish a lot of that advertising matter with his name printed on and he is going to pass that out to his customers to try and induce them to use more of our product, and the stuff that we are putting out through the various trade journals and magazines I know is very beneficial to the industry.

Q. And the Association has placed in the hands of the lumber dealers, wholesale and retail, and architects all over the country have they not, printed copies of these rules at the Association's expense?

A. Yes, sir.

Q. State whether or not there has been much competition between the maple with other woods and flooring at different times, whether wood or synthetic, or what?

A. Very strong competition all the time between the oak and the fir and pine and composition flooring.

Q. And does gum come in competition with it too?

A. I don't know whether they make gum or not; I never happened to bump into that."

[fol. 461] Cross-examination.

By Mr. Fowler:

Q. Mr. De Witt, one of those batches of correspondence referred to there, I just happened to notice the Wood Lumber Company, isn't it?

A. Wood Lumber Corporation.

Q. Where are they located?

A. Worcester, Massachusetts.

Q. And what was the character of the lumber that you had under consideration, that you were offering them?

A. Birch and maple.

Q. What was the dimension?

A. 13-16 x 2¼ clear birch and maple.

Q. And the price offered them was \$99.50 I believe.

A. Yes, sir.

Q. And he was trying to get you to reduce that price, he wrote you I believe that several others had offered him much cheaper prices than that.

A. Yes, sir.

Q. And you kept on telling him "I won't come down a dollar, \$99.50."

A. Yes, sir.

Q. And you wouldn't come a dollar under, would you?

A. No, sir.

Q. "D G" means in this rate book, means the price in Massachusetts, isn't that so? The rate book shows for itself, isn't it a fact that at the very time the Massachusetts price on lumber of that dimension was \$99.50 as prescribed by the Association?

A. Well I don't know, you have it there.

Q. Well look right there and see. There is your rate book and there is the figure right there.

Q. What is the date of it?

A. That is May—just before that, just a few days before that [fol. 462] letter. I believe that was the 26th, and this is the 21st.

A. Is the price the same on birch and maple on here?

Q. Well look and see; that rate book shows \$99.50.

A. Well but wasn't—at that time wasn't there some spread between birch and maple as you claim?

Q. That was on maple, wasn't it?

Mr. Johnston: Is that the 1922 rate book?

Mr. Fowler: That particular rate book issued three or four days before that letter was written.

A. I would have to have the rest of the book to know what the Worcester rate was.

Q. Well you have got D. G. there.

A. I don't know that it is there or not.

Q. There is another rate book, that shows D. G.

A. That is what I want to see (examining document). Massachusetts and points, G. F. 99.50 for 13-16 2¼ inch maple flooring.

Q. Can you explain to me why you hit exactly on the cent, \$99.50?

Mr. Johnston: That is on maple your Honor. This inquiry was for birch in that letter.

Mr. Fowler: There is no difference in the dimension.

Q. Can you tell me why you hit exactly on your Association price?

A. Well probably we thought that was the market price at that time.

Q. Well you did think it was the market price, as a matter of fact, that is the reason you quoted it, and you got that information from those books didn't you?

A. Not necessarily.

Q. Well didn't you as a matter of fact, you had the book, didn't [fol. 463] you?

A. We had the book, yes.

Q. Now in regard to this information, I noticed where you wrote a letter to a friend of yours up in New York somewhere, Syracuse, or where was it?

A. Buffalo.

Q. Buffalo, New York, and you asked him to write back to these gentlemen over here to get certain data, get prices.

A. Yes, sir.

Q. Now at that time you were not getting the exchange of statistics were you?

A. I testified I did not remember.

Q. You don't remember?

A. Whether I did or not.

Q. What you wanted to know was the prices those gentlemen were getting for their lumber wasn't it?

A. Yes, sir.

Q. And you took that method of getting it.

A. Yes, sir.

Q. And that is the very reason you take those statistics isn't it, you want to know what your competitors are getting for their lumber?

A. That was one of the reasons.

Q. Well that is your main reason isn't it?

A. No, the other parts of the statistics is also very valuable to us as I have already testified.

Q. It is all valuable.

A. It is all valuable, that part too.

Q. When you go to make your price you consider all those statistics don't you?

A. Yes, sir.

Q. And you fix the price very considerably by what you learn from these statistics don't you?

[fol. 464] A. That is one of our sources of information.

Q. An important one isn't it?

A. Important one, yes.

Q. In regard to that freight rate, the difference in the freight rate from Cadillac and Oconto, do you sell down at Minneapolis?

A. Yes, sir.

Q. The Cadillac freight rate to Minneapolis is 27 cents isn't it? What is your freight rate?

A. About 17 cents, I am not sure.

Q. It is exactly 17 according to this here, ten cents difference, that is two dollars a thousand isn't it?

A. Yes, sir.

Q. That is, one thousand is supposed to weigh about two thousand pounds isn't it?

A. Yes, sir.

Q. Do you sell in Chicago?

A. Yes, sir.

Q. The Cadillac rate there is twenty cents and yours there is twelve and a half, seven and a half cents difference.

A. Yes, sir.

Q. That would be a dollar and half a thousand.

A. Yes, sir.

Q. Now I believe you said you didn't feel yourself bound by anything that the association does. I think you did sign the agreement in 1921, didn't you? This Minimum Price basis.

A. If our name is on there, why we signed it.

Q. Holt Hardwood Company, signed A. L. De Witt.

A. That is mine, W. L.

Q. W. L. I guess that is right. You write a little bit like I do, it is sometimes a little bit difficult to read what it is. You did feel yourself bound by that when you put your signature on there.

A. We never surrendered the right to make our own prices on flooring.

[fol. 465] Q. You never did?

A. We never did and never will, and we have never been—never considered that we were not at liberty to make any prices on our product that we wished, regardless of anything that we signed.

Q. Mr. De Witt, when you signed that agreement, didn't you regard that you was bound by it?

A. I did not.

Q. What did you put your signature on it for, just for fun, was that it?

A. No, but it was part of the—there was a lot of other items in that articles of agreement besides that basis.

Q. I know, but—

A. And we have never—and our actions show that we never have considered ourselves bound. If you will go through all our files and get the prices that we have obtained for our flooring you will find that it has always varied, sometimes it will be the Association price, sometimes lower and sometimes higher, but we have never surrendered the right to make our own prices on our product.

Q. Then when you made your agreement you didn't consider that you were bound by a single solitary thing in the thing you signed, is that it?

A. We knew when we signed that agreement that we were not going to be compelled to maintain any price.

Q. Well why did you know that when it is specifically stated in that page that you are bound to observe the minimum price?

A. Because there had been those same agreements and practically the same agreements in force for a long time and they never had [fol. 466] been observed, they never had been enforced, and we knew they would not be.

Q. Then you rather contradicted yourself when you say they had been in force and never was enforced.

Q. I say the articles were in force but they never had been considered enforced.

Q. These statistics and the information you now get is very valuable?

A. It is valuable, yes, sir.

Mr. Darby: I wish to state that Mr. De Witt's train leaves in fifteen minutes, and that we will have some one else to cover matters about which we wished to ask him.

H. H. SHEPECK, being first duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

I am in the lumber business and have been in it for 17 years. I have been with the I. Stephenson Company, Trustees, during all that time. I am now Assistant Manager and Sales Manager of I. Stephenson Company, Trustees. I have been Assistant Manager since January, 1920 and have been Sales Manager for about 12 years.

The I. Stephenson Company, Trustees own about 235 million feet of stumpage as of January 1, 1923, of which about 65 million are maple. I have given Mr. Keehn the figures. They own very little beech, I think around about 100,000 of beech and between 30 and 35 million feet of birch. The figures that I have given to Mr. Keehn are correct to the best of my knowledge.

We manufacture rough maple lumber. The rough maple lumber prices were very high during the last half of 1919 and the first half, or a little more than the first half, of 1920. I think \$170.00 a thousand for first and seconds was about the peak—\$170.00 to \$175.00. The peak on No. 1 Common I think was about \$115.00 to \$120.00 a thousand. I do not know just how high No. 2 Common was, but I think it was around \$70.00 to \$75.00 a thousand. These were abnormally high prices.

A large percentage of our flooring is sold at delivered prices. However, we determine what price we want for our flooring f. o. b. mill and we then add to that the actual freight to destination. All we are interested in is what flooring nets us at our mill.

We ship perhaps 95% of our flooring to Wisconsin and northwestern points and have developed our business in that territory because we have the advantage of freight rates. We ship very little flooring east because we do not feel that it is to our advantage to do so because the Southern Michigan mills have the advantage of freight rates over us to that part of the country.

We have been selling flooring for the past 22 years and have advertised it extensively. We are selling quality. We have the same customers day in and day out to a big extent. I think 80% of our business each year is done with the same trade.

Our Company is located at Wells, Michigan and owns the Escanaba & Lake Superior Railroad, which connects with the Soo Line at North Escanaba and with the Chicago, Milwaukee & St. Paul Railroad at Channing, Michigan. Our railroad has very full and complete tariffs and in every case we determine what our flooring

should net us f. o. b. mill and then add the actual freight to destination before making quotations. We use the freight rate book issued by the Association very little. If we ship birch flooring to the east, we look in the freight rate book issued by the Association in order to ascertain what the Cadillac rate is to the east for the reason that [fol. 466b] if we want to move birch flooring, it is necessary to cut the price. On birch flooring shipped to the east, we figure what our price at the mill and what the actual freight is and then cut the price from \$3.00 to \$7.00 because we know that other manufacturers can ship into the east more advantageously than we can because of lower freight rates.

I do not know of any understanding or agreement among the members of the defendant Association, or among the members of any previous Associations, that flooring should be sold on the Cadillac basis or that the delivered price should be arrived at by adding the Cadillac freight rate. We have never used any such method.

There are many factors in determining what prices we shall charge for our flooring. The first factor is to get, as near as you can, to the cost of our rough lumber. It is very hard to get at the cost of your lumber and we figure what the rough lumber will cost us. We know what it costs to manufacture flooring, and we have a large storage capacity and we try not to sell our flooring unless there is a profit in it, because flooring, in our experience, has been a seasonable proposition. While for three or four or five months we may pile up our flooring and the price may go way down to the bottom, way below the cost of production, it generally comes back, and we take our Association statistics of stocks on hand, production, and shipments into consideration. We also cover the territory where we send the large percentage of our flooring very thoroughly; we have [fol. 467] four men in the State of Wisconsin alone, and we get information from them right along as to what others are doing.

"Q. You have travelling salesmen?

A. We have four representatives in the State of Wisconsin, and we have a man at Minneapolis, and a man at Chicago, and we get information from them all the time. We also keep very close track of building reports, as to the amount of building that is going on.

Q. Is that through the Dodge Service?

A. Yes, sir; Dodge Service and the Improved Bulletin of Minneapolis, we use that a great deal.

Q. And Lumber and Trade papers?

A. Yes, sir; and newspaper information.

Q. You try to get a profit. Are you always able to do that?

A. No, sir, we are not."

I am almost free myself to fix any price on our flooring I wish, but occasionally when I think I ought to make a big change in price I talk the matter over with the General Manager, but no one else.

In the northwestern territory, we come in competition largely with the mills of Northern Michigan and Wisconsin such as the Wisconsin Land & Lumber Company, the R. Conner Company, J. W. Wells Lumber Company, Northwestern Lumber & Cooperage Company,

Flanner-Steger Land & Lumber Company, Robbins Flooring Company, Sawyer Lumber Company, Kneeland-McLurg Lumber Company, Foster-Latimer Lumber Company, and to some extent with Ward Brothers. The competition from Southern Michigan mills is not felt so much in that territory except Cobbs & Mitchell, who [fol. 468] have been very active in that territory during the last few years. As long as I have been acquainted with the conditions in the northwestern territory, there has always been very active competition in the sale of flooring. There has never been a time when there was any uniformity of price or substantial uniformity of price for flooring. I know that because we get information very largely from our customers. We keep in very close touch with the trade we have. We have had it for a very long time and we make every effort to hold it. Our instructions to all our men are to meet any legitimate competition in order to hold this business. We have occasions from time to time to reduce our price after our first quotation to a customer in order to meet competition, either from a member of the Association or a non member. Sometimes we are able to meet competition and at other times we are not.

Our flooring is 13/16 instead of 25/32, which is the Association standard.

The Court: Do I understand from that that the standard flooring known as 13/16 is in reality a 32 of an inch less than that?

A. Yes, sir.

The Court: Sold as 13/16, but in reality is 25/32?

A. Yes, sir.

Q. Do you know of your own knowledge where that portion that was taken off is? I mean whether taken from the top or from the bottom.

A. I don't know. We are not interested in it and paid no attention to it.

We have advertised our "Ideal" brand of flooring for years at considerable expense. We have special machinery of our own patents and we do not believe that it would be to our advantage to change. We have an established trade with wholesale and retail lumber [fol. 469] dealers who handle our flooring, and the fact that our flooring is different from other flooring eliminates some competition.

There wasn't any uniformity of price when the so-called Minimum Price Plans were in effect. I knew that from daily contact with the trade. We were meeting competition. We were seeing the quotations made by others and knew what orders were being placed with other concerns. There never was any demand for a fine or penalty and none was ever imposed upon us for a failure to observe Minimum [fol. 470] Price Plans. I know of no demand that was made upon anyone else for a fine or penalty for failing to observe the so-called Minimum Price List.

I am a member of the Advertising Committee at the present time.

Q. I wish you would state briefly, what commissions, and under what circumstances you allow commissions?

A. We try not to sell our flooring through the wholesale trade; we try to sell our flooring to the retail yards, and the main reason

for doing that is that we do not want to lose our identity as to our brand of flooring. If you sell a wholesaler, it all goes in a bunch as Maple flooring; whereas, if you sell to a retailer, we try to tell him we have something, and show him that we have a good flooring and that it is to his advantage to handle it; therefore, we have very few wholesalers that we allow a commission to, except in the east. The only commissions we pay, as a rule, are commissions to men for selling our product. We invoice direct to our customer, to the man who puts it in his warehouse. Our commission- to our selling representatives are \$1.50 as a rule, and occasionally we pay \$2.00.

Q. Do you know of any uniform rule, Association rule, in effect now?

A. No, sir.

Q. With respect to commissions?

A. No, sir.

The Court: That really means that in some cases you do your business through brokers?

[fol. 471] A. Yes, sir; and we pay even our own travelling salesmen that way; they have been working on a commission basis instead of a salary, and they pay their own expenses.

Q. I notice in some of these books some terms with respect to commissions. Did you ever follow them or use them in your business?

A. No, sir.

Q. Were you ever brought upon the carpet for not doing so?

A. No, sir.

Q. I have seen in some of these various freight rate books, Mr. Shepeck, various references, some with respect to differentials, with respect to different faces, thicknesses, widths, grades, etc. I wish you would explain for the benefit of the record whether or not it is practical to observe in the conduct of the flooring business any fixed differentials or spreads with respect to the matters I have mentioned above.

A. It is not practical to have a uniform spread between a different grade or thickness of Maple flooring for many reasons. On the grades, particularly, the demand and supply regulates that entirely. Now, for example, in 1920, there was a very large amount of factory building, and there was a scarcity of factory flooring, so that we could not furnish within one-tenth of the factory flooring that our own customers wanted. The result was that the price of factory flooring went way up, and some of the mills, as one of the witnesses said, had such a demand that they made jointed flooring, never had an opportunity to kiln dry it, in order to supply the demand. In 1921, the factories were over built, and there was no factory [fol. 472] business and a drop down to about Fifteen Dollars a thousand for factory flooring; it sold cheap at Fifteen Dollars.

Q. What was it in 1918?

A. It went as high as \$165.00; \$150.00 was common at that time.

Q. Weren't you able to stop that slide of factory by virtue of getting these statistics that you got from the Secretary?

A. No, sir; as far as thicknesses and faces go, for instance, the southern Michigan mills, it took a certain time in moving their

inch and a half clear flooring—13/16 x 1½, because the east did not absorb the amount of flooring they produced; the east want wider flooring. Where the northern people sell theirs, there is a good demand for inch and a half and even inch face flooring. We sell a lot of inch flooring. Our inch and a half moves in mixed cars and we never have a surplus. For our inch and a half face flooring, we can get ten dollars a thousand more, frequently, than most of the southern mills.

Q. Why?

A. Because they have to dump theirs and get rid of it as best they can; while in Northern Wisconsin the trade will handle four or five different kinds of flooring, that is, sizes, and these yards will stick inch face, inch and a half and 2¼ inch face in every car they order, a little of each size, and it keeps our stocks balanced. We have never made three and a quarter inch flooring because there is no demand for it in the northwest; they go to narrow stock and shorts more than in the east.

Q. Are there any other reasons that you know of why no fixed prices rule?

[fol. 473] A. Because it changes every day; your stock conditions change every day.

Q. Why?

A. On account of the demand and your own stocks on hand.

Q. And your production?

A. And your production; it all is a big factor.

Q. Did you yourself ever observe any data in these books with respect to the spreads or differentials among the different grades, sizes, thicknesses, or faces of flooring?

A. No, sir.

Q. How do you regard this data in the books,—as binding upon you, or as information for your consideration, or what?

A. Just information is all.

Q. Never binding?

A. No."

Our terms are 2% for cash in 15 days from date of invoice, 60 days net. The present Association has no rules with respect to terms of sale that I know of. Our terms were formerly 2% 10 days, when we shipped lumber by boat. Upon discontinuing shipment by boat, we changed to 2% 15 days. Many buyers in the east take 2% after unloading car. We do not object if they overrun for 5, or 10 or 15 days.

We have never been a party to any understanding or agreement for limiting or curtailing our production. I never heard of any such agreement among the members of the Association. Our production is regulated considerably by the amount of raw material we have on hand to work up and the market for raw material. There have been a few years when we felt we could get more money [fol. 474] out of the lumber than to manufacture it into flooring, which, of course, would cut down our production of flooring.

Our production fluctuates considerably. We produce all the way from 15 million feet down to 4½ millions, due to our own condi-

tions. We recently completed a large new warehouse for the storage of flooring. We wanted more warehouse space so that we would not have to try to sell our flooring when there was no demand for it. During December and January, as a rule, the flooring business is very quiet and it is then a bad time to curtail production because you need the room in the lumber yards as a rule and because your saw mills are running full time in the winter to save handling of the logs. Rather than shut down our flooring factory on account of space or dumping flooring on the market at any price we can get for it, we built the warehouse so we could store the flooring and hold it until there was a demand for it.

The statistics issued by the Association are a big benefit to us. The information that we gather from these statistics as to stocks on hand, production, new orders booked, also the weekly sales reports, are of considerable benefit to us. They enable us to form an opinion as to what the conditions are and assist us in intelligently handling our flooring business.

Q. How do you handle your flooring business, whether you consider present prices or future prices, or both?

A. We are concerned with both.

We try to figure out what conditions are going to be for thirty or sixty days ahead, because flooring prices in our experience, have fluctuated very fast and to a very large amount, and we have gone through some years when we felt we should get so much money for our stock and we would hold it instead of cutting two dollars, and inside of thirty days we would cut ten, and we are trying not to have that recur if we can. We had that happen thirty days ago, to [fol. 475] give an example, with factory flooring; we were asking, I think, \$51.00 at Wells for factory flooring and were piling it up. We went out and took two or three big orders one day from one of the members of the Association at \$6.00, I think, under that price. We felt that inside of thirty or sixty days factory flooring would be selling for \$40.00, and we would rather cut five or six dollars then, than to cut ten or fifteen dollars in thirty days, based on the sales report. We took one large order from California at a cut of \$4.50 from that price, but that did not make us feel bad because we were satisfied with the price obtained.

Q. Because you thought the future condition would make the price of flooring lower still?

A. Yes, sir.

Q. Those statistics set forth in the weekly reports and other reports made by the Secretary do enable you then to form an opinion based upon a certain amount of facts which are gathered as to what future conditions may be?

A. Yes, sir.

Q. And it gives you a good idea of what present conditions are?

A. The volume of the sales is really more interesting to us, I think, than the prices.

Q. Why is that so?

A. The information we get from the sales reports as to prices is a little too old to do us much good; we generally have it beforehand.

[fol. 476] Q. Why is that?

A. It is about two or three weeks after the sales have been made that these reports get to us.

Q. I understand you report weekly?

A. Yes, sir.

Q. Then that is sent in to the Secretary?

A. Yes, sir.

Q. Some of them get in late, and some of them do not get their reports in on time?

A. Yes, sir.

Q. Then I understand the method is, that these statistics are tabulated or compiled in Mr. Kechn's office and then mailed out to the members?

A. Yes, sir.

Q. So you say that much of that information as to prices, you already have that from your own salesmen and your trade, before you get that report?

A. Yes, sir.

Q. And that you are interested principally in what?

A. The thing that interests us a lot is the amount of the sales per week.

Q. How about the unfilled orders?

A. Yes, but I mean on the sales report, the amount of the sales reported on the sales report is of vital interest to us."

The field work done by Mr. Robertson in various parts of the country has been very good, although from our own standpoint it has not helped us much because his work has been done in territory where we do not ship.

[fol. 477] We are not much interested in the freight rate service or traffic book.

At meetings of the Association I have sold flooring to other members or bought from them in order to fill our orders. I have found it an advantage to come into personal contact with other manufacturers in that respect. The exchange of experiences with respect to operating conditions is very valuable. Any time two lumbermen get together it is always valuable.

Cross-examination.

By Mr. Fowler:

The standardization feature of the Association is of service to us on lengths and things of that kind. It is of service in that respect, but as far as thickness goes we manufacture another thickness and our lumber will not match with most others, so we don't get that value from the Association. We would get something out of reinspection if we needed it, but we have never needed it. We have been able to settle our complaints without the help of re-inspection. We get some good out of freight rates. Yes, we wouldn't say that we didn't get any, we do get some.

Q. Where you do get your good is out of these statistics?

A. The main good and advantage we have had out of our

Association, in years past is the lengths; the saving of waste that the Association has brought about by uniform lengths.

Q. You don't mean that that is the principal good that you get?

A. In dollars and cents that is the biggest help we have had.

Q. Isn't your dollars and cents in the price which you are able to make on account of these statistics, there are your dollars and cents.

A. Sometimes the statistics cost us money, in order to get out.

Q. How do you lose money out of these statistics?

A. I feel pretty good sometimes, until the statistics come along, and then I feel sick and cut my price.

Q. If you didn't get the sickness you might have to cut more; [fol. 478] sickness helps you in that case. If it wasn't for the statistics you wouldn't belong to that Association right now?

A. No, I don't think we would; we might.

Q. So that is the reason——

A. It depends on what it costs us; it is just like any service you pay for, like the Dodge Reports or anything else we pay for.

Q. Of course you examine these statistics carefully, don't you?

A. I try to; yes, sir.

Q. Very largely with reference to production?

A. Yes, entirely.

Q. Especially you say with reference to the quantity that is moving?

A. Yes, sir.

Q. Because that shows the extent of the demand?

A. Yes, sir.

Q. When there is a large demand then you know the price is to be good? That is natural, isn't it?

A. The bigger the demand the better the prices; yes, sir.

Q. That is what interests you?

A. Yes, sir.

Q. You also look at the prices, although you do say they are a little bit ancient?

A. Yes, sir.

Q. You manufacture a great deal of lumber that is not converted into flooring at all?

A. Yes, sir.

Q. If there is a large demand for flooring, you will make more flooring?

[fol. 479] A. Yes, sir.

Q. If there is a small demand for flooring you will make less flooring and sell your lumber on the market?

A. That is not always possible.

Q. When it is possible, you do that?

A. It is a very small part of the time that it is possible.

Q. When you see that there is not a large demand for flooring, and that there is a large supply as shown by these statistics, don't you then sell a good deal more of your lumber in the market and not turn it into flooring?

A. It is too late to do that. Your flooring stock has already been

put up; it takes nine months from the time you saw your log until that lumber is ready to go into flooring. That lumber for flooring is already in the pile.

Q. Doesn't that have any effect on you at all?

A. It does to a certain extent, yes, sir, but it don't so far as curtailing our production for the time being; we can not curtail our production tomorrow if we look at the report today; it takes nine months before we can get a reaction on our production.

Q. These statistics on stock on hand and production and those things go back over a year?

A. Yes, sir; further than that.

Q. So you consider the whole situation for a whole year?

A. Yes, sir.

Q. But anyway, you do say that these statistics showing demand and supply and stocks on hand and all those things, and prices paid, are of very great value to you?

A. Yes, sir.

Q. And of course that means that they are of great value to you in that they enable you to get more money out of your lumber?

A. Not necessarily; no, sir.

[fol. 480] Q. Isn't that what you are striving for, to get more money for your lumber?

A. To a certain extent; yes, sir.

Q. Would you be in business if it was not for the money you get out of it?

A. No, sir.

Q. You are striving for profits?

A. Yes, sir.

Q. And that is all you are striving for, profits?

A. Oh, not entirely, no.

Q. You are not doing it for exercise, are you?

A. No.

Q. Or amusement; you could get amusement somewhere else?

A. I get amusement out of my business.

Q. You are just the same as other men in business; you are in business to make money out of it?

A. Yes, sir.

Q. And the things that is valuable to you is that which enables you to make more money?

A. It enables us to keep from going broke.

Q. That is the same thing?

A. Yes, to a certain extent.

Q. That is, it keeps you from losing money?

A. Yes, sir.

Q. Were you one of these gentlemen that had a kind of side agreement up there in the north?

A. Never had any side agreement; no, sir.

Q. You had an understanding?

A. No, sir; not as to prices.

Q. What was there about that?

A. We meet up there in the north quite often for many things.

[fol. 481] Redirect examination.

By Mr. Darby:

The two sheets of paper you hand me are statements showing comparative costs of operating supplies from 1912 to 1923, and comparative wages paid per day to employes during the same time?

A. Yes, sir; said statements are true and correct to the best of my knowledge and belief. They represent wages paid and costs incurred by our company during the years stated.

(Said papers marked Defendants' Exhibit T, T-1 respectively and received in evidence.)

Through inadvertence of the Court reporter there was no Defendants' Exhibit S.

[fol. 482] Letters identified by witness De Witt, marked Defendants' Exhibits U to U-17 inclusive and received in evidence.

(Through inadvertence there was no Defendants' Exhibit U-1.)

The letters identified by the witness and not heretofore read in evidence, are as follows:

Letter dated November 22, 1921, from Holt Hardwood Company, Oconto, Wisconsin, to Dan Klein & Son, Atlanta, Georgia, reading as follows:

DEFENDANTS' EXHIBIT U

"We are advised by the Maple Flooring Association that you are in the market for Maple Flooring. May we submit the following list of prices, which are delivered on Atlanta, Ga., rate of freight in car load lots:

13/16 x 2 1/4" Clear Maple Flooring	\$101.75 per M
13/16 x 3 1/4" Clear Maple Flooring	95.25 per M
13/16 x 2 1/2" No. 1 Maple Flooring	76.75 per M
13/16 x 3 1/4" No. 1 Maple Flooring	78.00 per M
13/16 x 2 1/4" Fety. Maple Flooring	36.75 per M
13/16 x 3 1/4" Fety. Maple Flooring	40.25 per M

Including \$1.50 per M commission to you.

We can furnish 2 1/4" Jtd. Maple Flooring in either a No. 1 & Btr. grade or in a Fety. & Btr. grade. We do not care to sell this on grade the same as we do the other widths as there is not much market for 2 1/2" Clear flooring, and the only way that we can afford to make the Jtd. stock is to make it in a grade which will take care of the entire run of the lumber.

We can make very attractive prices in either the No. 1 & Btr. and Fety. & Btr. grades, and figure a special price for each inquiry. We will be pleased to hear from you when you are in the market for flooring."

[fol. 483] Letter from Holt Hardwood Company, Oconto, Wis., to O. D. Haskett Lumber Company, Indianapolis, Ind., dated January 6, 1922, reading as follows:

DEFENDANTS' EXHIBIT U-2

"Your inquiry of the 4th has come to us through the Maple Flooring Manufacturers Association, and we are pleased to offer you the following stock for prompt shipment:

25 to 30 M' 13/16 x 2 1/4" Fc. No. 1 Maple Flooring @ \$71.25 per M.

25 to 30 M' 13/16 x 2 1/4" Clear Maple Flooring @ \$96.25 per M.

Delivered Indianapolis, allowing you \$1.50 per M commission.

We can offer you some Basswood as follows:

In car load lots:

4/4 F. A. S. Basswood, Rough @ \$93.00 per M

5/4 F. A. S. Basswood, Rough @ \$98.00 per M

or, if included in car of Flooring.

4/4 F. A. S. Basswood, Rough @ \$90.00 per M

5/4 F. A. S. Basswood, Rough @ \$95.00 per M

F. O. B. Indianapolis.

We hope that you may be able to favor us with an order."

Letter dated January 14, 1923, Holt Hardwood Company to Charles Horn Lumber Company, 608 South Dearborn Street, Chicago, Ill., reading as follows:

DEFENDANTS' EXHIBIT U-3

"GENTLEMEN: In reply to your inquiry of the 13th we are pleased to quote you the following prices on maple flooring delivered Chicago:

[fol. 484] 1 car 13/16 x 2 1/4" Fcty. Maple Flooring \$25.00.

1 car 13/16 x 3 1/4" Fcty. Maple Flooring \$30.00.

1 car 13/16 x 2 1/4" No. 1 Maple Flooring \$69.75.

1 car 13/16 x 3 1/4" No. 1 Maple Flooring \$70.75.

1 car 13/16 x 2 1/4" Clear Maple Flooring \$94.75.

1 car 13/16 x 3 1/4" Clear Maple Flooring \$90.75.

All of the 1-1/16 Flooring at \$5.00 over the 13/16.

2 cars 12/16 x 2 1/2" Fcty. & Btr. Jtd. Maple Flooring @ \$65.00.

2 cars 13/16 x 2 1/2" No. 1 & Btr. Jtd. Maple Flooring @ \$75.00.

13/16 x 3 1/2" Fcty. & Btr. Maple Flooring @ \$66.00.

13/16 x 3 1/2" No. 1 & Btr. Maple Flooring @ \$76.00.

The above Jtd. items in 1-1/16 Flooring \$5.00 over the 13/16. We can allow you a commission of \$2.00 per M on these prices.

Hoping that you may be able to favor us with an order, we remain,

Letter dated January 13, 1922, Charles Horn Lumber Company, Chicago, Ill., to Holt Hardwood Company, Oconto, Wisconsin, reading as follows:

DEFENDANTS' EXHIBIT U-4

"GENTLEMEN: Kindly quote us delivered Chicago, Illinois, on the following Hard Maple Flooring:

- [fol. 485] 1 car each 13/16 x 2 1/4" and 3 1/4", Factory.
 1 car each 13/16 x 2 1/4" and 3 1/4", #1.
 1 car each 13/16 x 2 1/4" and 3 1/4", Clear.
 3 cars each 1-1/16 x 2 1/4" and 3 1/4", Factory.
 1 car each 1-1/16 x 2 1/4" and 3 1/4", #1.
 2 cars each 1-1/16 x 2 1/4" and 3 1/4", Clear.
 2 cars each 13/16 x 2 1/2" and 3 1/2" Factory & Btr. & #1 & Btr. Jointed.
 1 car each 1-1/16 x 2 1/2" and 3 1/2", Factory & Btr. & #1 & Btr. Jointed.

We would appreciate hearing from you promptly, as we have these orders to place."

Letter dated April 21, 1922, Holt Hardwood Company, Oconto, Wis., to Charles Horn Lumber Company, Chicago, Ill., reading as follows:

DEFENDANTS' EXHIBIT U-5

"GENTLEMEN: Replying to your telegram of the 20th, and confirming our phone conversation of this afternoon, we are pleased to name you the following prices on Maple Flooring, delivered Chicago:

- 1 Car 13/16 x 2 1/4" Clear Maple Flooring at \$94.75 Per M'.
 2 Cars 13/16 x 2 1/4" No. 1 Maple Flooring at \$74.75 Per M'.
 1 Car 13/16 x 2 1/4" Factory Maple Flg. at \$24.75 Per M'.

We can give you prompt shipment on the Clear, about six weeks on the No. 1 and about two weeks on the Fety.

Thanking you for your inquiry hope that you can favor us with the business, we remain."

Letter dated April 24, 1922, Charles Horn Lumber Company to Holt Hardwood Company, reading as follows:

DEFENDANTS' EXHIBIT U-6

"GENTLEMEN: We thank you for your letter of the 21st instant, [fol. 486] and we will try to send you an order if we can.

We are having some inquiry on 1-1/16 Hard Maple Flooring in both T. & G. and Jointed stock, therefore, we wish you would kindly quote us your prices, and in both faces, delivered Chicago, Illinois, rate of freight. If you will do this we will appreciate it.

With kindest regards, we are."

Letter dated April 25, 1922, Holt Hardwood Company to Charles Horn Lumber Company, reading as follows:

DEFENDANTS' EXHIBIT U-6½

"GENTLEMEN: In reply to your letter of the 24th, wish to advise that our prices on 1-1/16 Maple Flg. are \$10.00 over those on 13/16 Maple Flooring and the jointed flooring cost \$3.00 per M' more than the tongued and grooved."

Letter dated May 23, 1922, Holt Hardwood Company to Charles Horn Lumber Company, reading as follows:

DEFENDANTS' EXHIBIT U-7

"GENTLEMEN: Confirming our quotations made over the long distance phone this morning we are pleased to give you the following price list on Maple Flooring F. O. B. Oconto:

[fol. 487] 13/16 x 2¼" Face Clear Maple Flg. at \$90.00 Per M'.

13/16 x 2¼" Face No. 1 Maple Flg. at \$75.00 Per M'.

13/16 x 2¼" Face Fety. Maple Flg. at \$30.00 Per M'.

13/16 x 3¼" Clear Maple Flg. at \$85.00 Per M'.

13/16 x 3¼" Face No. 1 Maple Flg. at \$75.00 Per M'.

13/16 x 3¼" Face Fety. Maple Flg. at \$35.00 Per M'.

For 1-1/16" flooring add \$5.00 to the 13/16" in both clear and Factory grades and in the No. 1 Clear at \$10.00. For jointed flooring in both thicknesses add \$5.00 to the Tongued and Grooved price.

All of the above quotations carry your commission of \$2.00 Per M'.

With reference to the inquiry for 800 M' of 1-1/16 flooring for Detroit with to advise that we quoted you as follows:

800 M' 1-1/16 x 2¼" Face No. 1 Maple Flg. at \$89.00 Per M' F. O. B. Detroit, including your commission of \$2.00 Per M'.

Shipment to commence July 1st, and to continue as fast as manufactured or at about 250 M' per month.

(U-8, Second Sheet of Foregoing Letter)

We would not be able to withhold shipment on any of the order but would require that the customer take the flooring direct from the machine.

Thanking you for past favors and hoping to be favored with the business, we remain."

[fol. 488] Letter dated June 27, 1922, from The Nicola Lumber Company, Pittsburgh, Pa., to Holt Hardwood Company, reading as follows:

DEFENDANTS' EXHIBIT U-9

File #6077

"GENTLEMEN: Please quote your lowest price delivered Elmira, N. Y. on 84,000 feet 13/16 x 2 1/4" face Clear Maple Flooring

Specifications read "not over 10% under 4' long." Could you furnish in that way? How soon could you ship? Kindly refer to our file #6077."

Letter dated June 29, 1922, from Holt Hardwood Company to the Nicola Lumber Company, reading as follows:

DEFENDANTS' EXHIBIT U-10

File #6077

"GENTLEMEN: We have your inquiry of the 27th and are pleased to quote you the following price on Maple Flooring for immediate shipment, delivery Elmira, N. Y.:

84 M' 14/16 x 2 1/4" face Clear Mpl. Flg. standard lengths, \$97.50, including commission of \$2.00 per thousand. We can furnish the same flooring to contain not over 10% under 4' at \$100.00 per thousand, delivered Elmira, and hope that you can favor us with an order on one or the other of the two quotations."

Letter dated November 13th, 1922, Holt Hardwood Company to Falls Lumber & Fuel Company, Oconto Falls, Wis., reading as follows:

DEFENDANTS' EXHIBIT U 11

"GENTLEMEN: In reply to your letter of the 8th, we are please- [fol. 489] to advise that we are quoting the following prices on Maple Flooring at the present time f. o. b. Oconto:

13/16 x 2 1/4" Clear	2	-16'	\$95.00	per thousand.
" 2 1/4" "	2	-3 1/2'	85.00	" "
" 2 1/4" "	7	-23"	65.00	" "
" 2 1/4" No. 1	1 1/2	-16'	85.00	" "
" 2 1/4" "	1 1/2	-3 1/2'	75.00	" "
" 2 1/4" "	7	-17"	40.00	" "
" 1 1/4" #1&BTr.	1 1/2	-16'	55.00	" "
" 1 1/4" Fcty.	1	-16'	20.00	" "
" 1 1/2" "	1	-16'	20.00	" "
" 2 1/4" "	1	-16'	35.00	" "

Thanking you for your many favors, and hoping that you will continue to favor us with your business, we remain."

[fol. 490] Letters identified by Witness Shepeck marked Defendants' Exhibits V to V-37 inclusive, and received in evidence, said letters being as follows:

[fol. 491] DEFENDANTS' EX. V

Letter from Sam E. Barr, wholesale lumber, November 16, 1923, addressed to I. Stephenson Co., Wells, Mich.:

"GENTLEMEN: Your samples of 13/16 x 1 1/2 Selected White Maple Flooring received and regret to say that your flooring will not match, standard manufactured oak flooring. The tongue of your flooring is entirely too thick. I have also compared this flooring of yours with other standard manufactured maple flooring and find that neither will match.

I think I wrote you some time ago about manufacturing your flooring to conform to the measurements of other manufacturers of maple flooring, who belong to the MFMA. In this instance, if your flooring was manufactured with a smaller tongue, I could have given you an order for a carload of this Clear Selected White.

Thanking you for submitting sample, we remain,

Yours very truly, Sam E. Barr, by Gaynour."

Letter, November 19, 1923, from I. Stephenson Co., Trustees, to Sam E. Barr:

DEFENDANTS' EX. V-1

"DEAR SIR: We are in receipt of your favor of the 16th inst. and note contents with interest. We have never tried to make our flooring so as to match with other manufacturers. Some of the machines which we have in our flooring factory are of our own make, and upon [fol. 492] which we have our own patents. The big percentage of

our flooring is shipped to our regular customers. They have used our products for years, and as a general rule, we have very little trouble in selling all the flooring that we are able to produce, and your complaint is the first that we have ever received along this line. However, we do not ship very much flooring to the eastern Market. We thank you very much for writing us and know that you will appreciate our position in this matter."

Letter from Sam E. Barr, October 31, 1922, to I. Stephenson Co. Trustees:

DEFENDANTS' EX. V-2

I will read one portion of the last paragraph of the letter.

"Samples of your flooring received. You are making your tongue too thick to match up with standard made flooring. I am sending you a piece of Kerry and Hanson Flooring Company's flooring to show you that your tongue is too thick. Their matching is standard with Association mills and a great many others who do not belong to the association. Please let me hear from you if you do not think it advisable to make the tongue of your flooring conform to what other manufacturers are making theirs and oblige."

Letter from Daniel Clark & Sons, Corry, Pa., April 21, 1923:

DEFENDANTS' EX. V-3

"I. Stephenson Company, Wells, Mich.

GENTLEMEN:

Att. Mr. Shepeck

We wish to acknowledge receipt of the samples received from you [fol. 493] a few days ago and to say that we note that the gauge is different from the gauge of our own flooring as well as flooring manufactured by others that we do business with and in view of the fact that this material goes into yards, we believe that we would be headed for a lot of trouble.

We would therefore ask that if you would accept cancellation of our order unless you would be in position to furnish what we would call standard matching."

Then the other correspondence shows cancellation was finally agreed upon (Defendants' Ex V-4, V-5, V-6, and V-7).

Letter from Schneider-Deschamps Lumber Company:

DEFENDANTS' EX. V-8

Sept. 22, 1921.

I. Stephenson Co. Trustees, Wells, Mich.

"GENTLEMEN: We have had several inquiries for Factory Maple Flooring the past week and one inquiry calls for 40,000 ft.

The yards advise us that Beck is quoting 23.50 on this stock.

We wish you would advise us your price on your #2 Factory grade and about how this stock runs for grade, that is about how — waste would there be in laying this stock, it may be possible to interest some dealer in this grade to compete with Beck 23.50 price."

Letter from Schneider-Deschamps Lumber Company, dated Sept. 22, 1921, to I. Stephenson Co., Trustee:

DEFENDANTS' EX. V-9

"GENTLEMEN: Inclosed find our order for a car of flooring for [fol. 494] Northside Lbr. and Fuel Co., and in connection with this will say that in the past week we have called on every retail yard in the City and we get the same story at every yard, that is, Beck is selling the yards at 90.00 delivered on the job and we find that Holt and the Cooperage Co. are quoting \$89.00 on the clear and we were told that they are shading our price on the number one. We cannot sell Hilty Lbr. Co. at 89.00 and we feel that they are buying it for less, so it is up to us to take the business at competitive prices or leave it and if you feel that you do not care for any of this business we of course will pass it up.

We have tried to get started at Sheboygan this year as there has been considerable business there, and while we have quoted on nearly every inquiry we were never low enough to get the order. Last week Deschamps was at Sheboygan and quoted Hildebrand 90.00 to try them out but was advised that the Cooperage Co. made them a price of 89.00 through Newfeldt of Green Bay. We are advising you of these facts so you will understand what we are up against."

Letter from the I. Stephenson Co., Trustees, addressed to the Schneider-Deschamps Lumber Co.:

March 24, 1921.

DEFENDANTS' EXHIBIT V-10

"GENTLEMEN: Confirming our telegram in reply to yours of the 23rd inst., the prices we have made you on maple flooring are the lowest we would care to accept at this time. We figure they are

about \$10.00 below the cost of production and feel that we would rather pile our stock up or quit making it than lower the price.

[fol. 495] We would like very much to have the Brannum Lumber Company's order, but cannot see our way clear to cut the price at the present time."

Letter from Schneider-Deschamps Lumber Company, March 23, 1921, to I Stephenson Co., Trustees:

DEFENDANTS' EXHIBIT V-11

"GENTLEMEN: We called on Brannum Lumber Company, Racine, to get after that order for number one Maple Flg. you quoted them on and being a good friend of ours he told us that he has price from a good mill which is better than 5.00 lower than ours. It looks to us as if we would have to go at least 6.00 lower than our price to get the business. Will you wire us on this? We have confidence in what he says as we have always found him right on such things. The price would have to be guaranteed as per his letter.

They are ready to place 75,000 ft. which is half the order. Hoping to hear from you promptly, we are."

Letter from the same Company of April 22nd, 1921, to I. Stephenson Co., Trustees, in which he states that he obtained the prices on the oak flooring and states them in the letter. I would like to have that copied in the record too, with these other letters.

DEFENDANTS' EXHIBIT V-12

"GENTLEMEN: We received in the mail today some prices on oak flooring and thinking they might interest you we quote, F. O. B. Milwaukee, Wis.

Clear Quartered White	13/16 x 2 1/4"	face	2 to 16	120.00
" " Red	" "	"	"	105.00
Select Quartered White	13/16 x 2 1/4"	face	2 to 16	80.00
" " Red	" "	"	"	80.00

[fol. 496]

Clear Plain White 13/15 x 2 1/4" Face 2 to 16.....	85.00
" " Red	80.00

2" Face same as above.

1-1/2" face 5.00 less.

Clear Quartered	White	3/8 x 1-1/2" or 2"	87.50
"	"	Red	82.50
"	"	Plain White	62.50
"	Plain Red	"	57.50

Yours very truly, Schneider-Deschamps Lbr. Co."

Letter from the same Company, May 3, 1921, to I. Stephenson Co., Trustees:

DEFENDANTS' EXHIBIT V-12½

"We have your copy of quotation to Iron Bridge Lumber Co., and for your information will say that this yard is owned by the same people that owned the Mayville Lumber Co., and Neufeldt of Green Bay, quoted Northwestern Cooperage and Lbr. Co. stock.

13/16 x 2-¼" face clear maple 2 to 16.....	95.25
#1 1-½ to 16	78.50

They are now handling Northwestern Cooperage Stock at both yards, it seems that they handled your stock a few years ago and had some trouble with it.

They are not ready for flooring yet and we will see them again in the near future and maybe we can line them up."

Letter from I. Stephenson Co., Trustees, to Schneider-Deschamps Lbr. Co., June 28, 1921:

DEFENDANTS' EXHIBIT V-13

"We find we are going to have a surplus of 2-¼" 2-3-½'. We [fol. 497] wish you would please try and move some of this with the long stock and for the present time make the price of 2-3-½' Clear Maple Flooring \$15.00 less than the 2-16'. We also have two cars of 2-¼" Face No. 1, 7-23" which we are very anxious to move. If you can find a customer for this make him a special price on it.

We are also getting a little short of orders for Maple Trimmings and wish you would try and send us some orders for this item."

I would like to have copied in the letter of August 4, 1922, I. Stephenson Co., Trustees, to Schneider, Deschamps Lumber Co., Milwaukee, giving the prices on the flooring mentioned in that letter:

DEFENDANTS' EXHIBIT V-14

"GENTLEMEN: We have the following flooring on hand which we are anxious to move and you may quote prices named below until further notice:

20,000	13/16 x 1-½"	Clear Maple Flooring	9-23"	.....	\$60.00
70,000	"	#1 Maple Flooring	7-23"	.....	31.00
95,000	" x 2-¼"	#1	" 7-23"	.....	36.00
70,000	3/8 x 1-½"	#1	" 2-16'	.....	43.00
20,000	13/16 x 2-¼"	Clear Birch Floor	9-23"	.....	60.00
20,000	"	#1 Birch Flooring	7-23"	.....	31.00
200,000	13/16 x 2-¼"	Clear Birch Flooring	2-16'	.....	86.00

The above prices delivered any points in Wisconsin. We wish you would please put your efforts on the above items and see if you can send us orders to clean them up.

Thanking you for giving this your attention, we remain."

[fol. 498] Letter from Schneider-Deschamps Lumber Co. to I. Stephenson Co., Trustees, dated March 17, 1923:

DEFENDANTS' EXHIBIT V-15

"We have yours of the 16th inclosing maple flooring stock sheet and note what you say about orders for 13/16 x 2¼ clear. We do not seem to be able to get posted on the flooring situation at present. We lost several orders at Madison recently on account of a difference of 5.00 per thousand in the price on clear, and the dealers here advise us that they have prices from a number of mills quoting 103.00 on clear and from what we can learn this price is being quoted by southern Michigan mills. We wish you would give us what information you have on the market and this may be of some help to us."

Something here about claims.

Letter of March 19, 1923, from I. Stephenson Co., Trustees, to Schneider-Deschamps Lbr. Co., Milwaukee:

DEFENDANTS' EXHIBIT V-16

"We are in receipt of yours of the 17th inst. Quotations on maple flooring seem to be varying a great deal right at this time; some concerns seem to be swamped with orders and others needing them.

For your information we are inclosing herewith sales report, which will give you a good idea of what the different concerns are doing. Kindly return same as soon as you have looked it over.

We have plenty of orders for flooring, and are not very anxious for orders for standard stock, but, of course, we want to take care of [fol. 499] our regular trade. No doubt there will be a big shortage of flooring this summer and it is our ambition to be able to keep our customers supplied.

The writer plans on being in Chicago on Thursday, the 22nd, and it is possible I may be able to stop off at Milwaukee, but will let you know definitely if I am coming."

Here is something about the present suit, it may be interesting to Court and Counsel:

"As you no doubt know, the United States Government is trying to make the Maple Flooring Manufacturers' Association dissolve,

and a hearing comes off in Grand Rapids on March 28th. If this Association is not allowed to operate, then it is impossible for any group of men to get together for the purpose of talking over their business, but, of course, we will know more about it after the hearing."

Letter from Schneider and Deschamps Lumber Co. to I. Stephenson Co., Trustees, March 20, 1923:

DEFENDANTS' EXHIBIT V-17

"We are returning herewith your sales report of maple flooring and of course it is very interesting to us.

We can now see where some of the business we did not get has been placed, and while the price on flooring has not hurt our business very much in the country towns, we do notice the difference in Milwaukee and Madison and towns of that size that seem to be worked harder by the southern Michigan mills.

We hope you will find time to stop off here on the 22nd."

Letter from the same company, dated March 1, 1923, to I. Stephenson Co., Trustees:

DEFENDANTS' EXHIBIT V-18

"While at the Convention here Mr. Giese of Dahlke and Giese, [fol. 500] Princeton, Wis., took the matter of what he feels is a overcharge on some short flooring up with Mr. Mayer.

They feel that they were overcharged as they had a price and bought a part car from Hermansville at 15.00 per thousand less. We feel that they are not entitled to any allowance, at the same time we feel that it would be a good business policy to make the allowance. They operate three yards and we feel that their future business would warrant the difference. They expected to hear from you regarding this, but we have a letter from them today saying they wish to pay for the car and have not heard from you."

Letter of June 4, 1923, to Schneider Deschamps Lbr. Co., Milwaukee, from I. Stephenson Co., Trustees:

DEFENDANTS' EXHIBIT V-19

"We are in receipt of Mr. Deschamps note in reference to the price being quoted on number 1 flooring. Can you advise us what concerns are making the price you mention?

We would appreciate very much if you would give us all the information you can along this line from time to time, as it is very

important, especially right at this time, that we keep track of conditions as much as possible. We do not want to lose any of our customers in the smaller towns; that is, the mixed car orders on account of price on the flooring, and for the time being we are glad to have you meet legitimate competition where it is necessary. We do not want orders for straight cars of clear or factory flooring right at this time. Please use your own good judgment in these matters, or call us up at our expense at any time. We want to keep you in position to have an equal chance at the business."

[fol. 501] Letter from the same company of July 6, 1923, to I. Stephenson Co., Trustees:

DEFENDANTS' EXHIBIT V-20

"In calling on the dealers here the past thirty days we have not found any demand for flooring as most of them still had stock coming that was bought some time ago, but the past week we have heard of some low prices being made, and while we could not learn who was making these prices we learned today that some one has been quoting clear at 105.00 T. F. Pagel Lbr. Co. were unloading a car of J. W. Wells Lbr. Co. flooring today and John Eller Lbr. unloaded a car from them a few days ago. Coerper advised us that they were quoted a price of 105.00 this morning.

There is not much flooring business just now as most dealers are letting their stock run down as they anticipate lower prices on flooring. We look for considerable business here a little later, and we would like to be in line when it does come and we wish you would keep us posted on how you are finding business elsewhere and what others are doing in regard to prices."

A letter of July 7, 1923, from I. Stephenson Co., Trustees, to Schneider Deschamps Lbr. Co.:

DEFENDANTS' EXHIBIT V-21

"We are in receipt of yours of the 6th inst. and note what you say regarding flooring prices. The demand has been very quiet for the past thirty days, but from all information we can gather, we look for a nice volume of business in another thirty days. The price of \$105.00 sounds exceptionally low to us, and for the time being at least we would not want to go this low. However, as we have previously written you, we do not want you to lose any of your [fol. 502] regular trade, and even in Milwaukee we would be willing to make a price on clear flooring of \$108.00. We will keep you posted, and expect to have something definite to give you in the near future.

There seems to be very little business of any kind being placed right at this time, and we do not think cutting prices will help it any."

Letter of July 23, 1923, to the same company from I. Stephenson Co., Trustees:

DEFENDANTS' EXHIBIT V-22

"Referring to the writer's conversation with your Mr. Schneider, on my return home, find a large number of orders for clear maple flooring, which will clean up all this item that we have on hand. Therefore, think best not to take on any straight cars of this item at less than \$108.00 Milwaukee basis. If necessary, you may take on some #1 business at \$93.00 Milwaukee.

Of course, on your country trade, we do not want you to lose any of your old customers, and you may meet legitimate competition when it is necessary."

Letter from the same company to I. Stephenson Co., Trustees, August 1, 1923:

DEFENDANTS' EXHIBIT V-23

"Kindly refer to our order 732 for Milwaukee Lumber Co. Omit the Number 1 flooring on this order and ship about August 10th.

In making the rounds yesterday we found some one offering a car containing clear and some number 1 maple flooring at \$98.00 and \$88.00. This was offered by some concern in Chicago over the phone and represented as Cobbs and Mitchell flooring and evidently a rejected car as they said the car was loaded."

[fol. 503] Defendants' Ex. V-24 is a letter acknowledging receipt of the preceding letter, and promising early shipment.

Letter of August 21, 1923, from I. Stephenson Co., Trustees, to the same Company, Milwaukee:

DEFENDANTS' EXHIBIT V-25

"Inclosed please find two (2) copies of our August 16th flooring inventory with prices noted thereon. We are short of 2¼" clear maple flooring and want to hold right to this price. On other items you are at liberty to meet prices made by Cooperage Company, Hermannsville, and other legitimate competition, but do not want to meet prices made by men like Gibson, and concerns furnishing an inferior quality of flooring."

Letter of December 2, 1922, to Mr. J. O. MacKie, Minneapolis, Minn., from the I. Stephenson Co., Trustees:

DEFENDANTS' EXHIBIT V-26

"Inclosed find inventories of flooring factory and Cedar Yard of December 1st. Please work as much as you can on $\frac{3}{8}$ x $1\frac{1}{2}$ " No. 1, maple flooring, and any other odds and ends which we have on hand.

We also inclose new stock and price list of lumber we have on hand unsold."

Letter from J. O. MacKie, to I. Stephenson Co., Trustees, dated 1/6/23:

DEFENDANTS' EXHIBIT V-27

"Nichols and Cox sold about 250 M ft. of $1\frac{1}{2}$ " maple flooring in here at \$75.00 for No. 1 and \$85.00 for Clear less \$2.00 Com.

I note Berglund has paid for the car of extra shorts. Referring to the inclosed order for Capital City, they expect to order this all in by April 1st. They will want some $1\frac{1}{2}$ " number 1, $2\frac{1}{4}$ " clear and $2\frac{1}{4}$ " number 1, within a week or so, please save enough for them."

January 15, 1923, letter from Stephenson to Mackie:

DEFENDANTS' EXHIBIT V-28

[fol. 504] "Inclosed find new price list and stock sheet on flooring and you will note the advances we have made. This is absolutely necessary on account of the advance in the price of rough lumber and the cost of producing lumber."

Letter from Mackie to Stephenson Co., Trustees, January 26th, 1923:

DEFENDANTS' EXHIBIT V-29

"These Dower orders look pretty good with the exception of the one item of 4,000' of $1\frac{1}{2}$ " No. 1 on order #21. Mr. Dower showed me a quotation from Hermansville of \$81.25 F. O. B. Wadena, on a lot of about 60,000' of this, also a price of \$42.00 on about 100,000' of 7 inch to 22 inch $2\frac{1}{4}$ " clear maple, also a letter dated Jan. 22nd, in which they said their prices of Sept. 15th would not be changed. In view of this and the fact that they gave me all their flooring orders, even the car for Wadena where they have always

used IXL, I thought it all right to meet the Hermansville price. Mr. Dower showed me the Hermansville letters in confidence so if you have occasion to say anything, please do not refer to them."

Letter from J. O. Mackie to I. Stephenson Co., Trustees, dated 2/10/23:

DEFENDANTS' EXHIBIT V 30

"I am afraid I have lost the Evans Lee account at Eau Claire but as it was a matter of price, do not feel so badly.

Hermansville sold them 2¼" Factory at \$41.00 and 2¼" Clear at \$100.00 and they bought 4 cars.

The Northern Lbr. Supply Co. here at Wausaw had already bought their flooring when I got here. They got 2¼" No. 1. Maple 1½' to 3½' at \$60.00 and the other items from \$5.00 to \$15.00 below [fol. 505] our prices. I do not know who sold them but it was not Connors or Below.

Leave for Mpls. this afternoon and will be at the Builders Show in St. Paul all next week."

The Court: I take it this letter is from traveling salesman or a representative of the company.

Mr. Darby: I feel quite sure it is. I know that some of our people will know. Do you know whether Mackie is the traveling salesman of I. Stephenson Co. Trustees? Mr. Law says that he is their traveling man. Mr. Keehn says he is Minneapolis representative.

Letter addressed to Mr. Mackie by I. Stephenson Co., Trustee, dated September 26, 1922:

DEFENDANTS' EXHIBIT V-31

"We note from your report that you called on the Cedar Lumber Company, and Standard Cedar and Lumber Company, but don't you think that calling on these two companies is a waste of energy, unless they have changed somewhat since I knew them.

Please see if you can sell some ¾ x 1½" No. 1 flooring. This stock ought to move at \$43.00 delivered Minneapolis. Our condition on 2¼" clear birch flooring is a little better now, but we still want to work on this item.

You certainly made a lot of calls during the past week. Would it not be advisable to take a trip in northwestern Wisconsin and see what conditions are over there?"

Letter from Mr. Mackie to I. Stephenson Co., Trustee, on the I. Stephenson Company letterhead, by the way:

DEFENDANTS' EXHIBIT V-32

[fol. 506]

"Minneapolis, Sept. 23, 1922.

The Capital City Lumber Co. is after me again to try to get them some factory flooring and some 1½ inch number 1. Mr. Stanton just called me and wanted to know if we could not do something for him and the Thompson Lbr. Co. are also in trouble.

I have seen the letters you have written them and understand the situation, also, as I told you before, I notified every one of our customers in this territory more than two months ago to keep their flooring stock checked up closely as we felt sure there would be a shortage and it would be impossible for us to keep them supplied unless we had ample time. Tozer has had to substitute another make of Factory on one job and another job will be ready about the middle of next week. These are the jobs for which he ordered that 50. If there is any way it can be arranged, I believe we ought to try to take care of Capital City within the next week, even if some one else has to wait.

There has been a lot of oak flooring sold up here this year. They have a #2 common grade which competes with our #1, and retails here at \$37.00 for the 1½" and \$45.00 for the 2¼". It is full of worm holes but a coat of stain or varnish fills them up and it looks good. It goes in cheap apartment and the small houses built by contractors to sell. Another reason why oak is getting in here may be found in the list of prices a local line yard is charging for maple. 2¼" Factory \$85.00, 2¼" No. 1, \$150.00, 2¼" inch clear \$210.00.

Indications point to a very quiet fall trade. Nothing from country and less than normal in the cities."

[fol. 507] Letter from Mr. Mackie addressed to I. Stephenson Co., Trustees, dated October 14, 1922:

DEFENDANTS' EXHIBIT V-33

"I saw a quotation today from Kerry and Way, Saginaw, to Roy Thompson, offering him 1½" clear maple @ \$85.00 and number 1 @ \$70.50 with \$2.00 commission. There are also some low prices on 2¼" but I have been unable to find out who made them. I do not believe any one up here would buy this stuff but these prices get around and give the impression that the market is weakening and what few orders there are in sight are being held up. Was laid up two days this week—"

Letter from Mr. Mackie, Minneapolis, dated October 27th, 1922, to I. Stephenson Company, Trustees.

DEFENDANTS' EXHIBIT V-34

"J. C. Hill is offering J. W. Wells Flooring 1½" clear at \$88.50 and No. 1, at 73.50 Tennant is also making these prices."

Letter of May 4, 1923, from I. Stephenson Co., Trustees, to J. O. Mackie telling him—

"Please work on the odds and ends we have as much as you can; especially 1½" clear birch flooring. If necessary you may make a special price on this item.

I. Stephenson Co., Trustees."

Said letter was Defendants' Exhibit V-35.

Letter of August 8th, 1923, to Mr. J. O. Mackie from I. Stephenson Co., Trustees:

DEFENDANTS' EXHIBIT V-36

"Inclosed please find sales report for the week ending July 28. Kindly note and return. The Association is not giving out the information as to who made the sales. This will give you a good idea as to what others are doing."

Letter of August 3, 1923, I. Stephenson Company, Trustees, to Mackie:

DEFENDANTS' EXHIBIT V-37

"Inclosed please find inventory of flooring on hand August 1st, [fol. 508] with our prices noted thereon and you will note we have made some changes.

Can't you move some of our 1½" and 2¼" selected Red birch flooring? We can also handle orders for 2¼" No. 1 flooring. Do not be afraid to send us orders for clear and factory flooring, as we are in position to make prompt shipments of these grades."

[fol. 509] FRANK M. HODGES, being duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

I am the Manager of the lumbering department of the Oval Wood Dish Corporation at Tupper Lake, N. Y. I am 53 years of age. The Oval Wood Dish Corporation manufactures wood dishes, clothes pins, pie plates, hardwood lumber and flooring, and has been in business since 1918. Our Company used to be in business at Traverse City, Michigan. We did not manufacture any maple, beech or birch flooring there. When our stumpage was used up in Traverse City, we moved to Tupper Lake, N. Y. We began the manufacture of maple, beech and birch flooring in June and July, 1921 and joined the Maple Flooring Manufacturers Association that was then in existence in August, 1921, and we had no difficulty in securing membership in the Association. We applied to Mr. Keehn and gave him our references, etc. It was about a month before we were admitted. I suppose they had to appoint a committee to investigate us and then at the next meeting they voted to take us in.

There was nothing said about our keeping up any Minimum Price Plan or observing any uniformity of prices or selling our flooring at any price in accordance with any rules of the Association or in accordance with the prices at which other members sold their flooring. The only requirement that I remember of was that they wanted us to maintain the Association grades according to the rules because they guaranteed all flooring manufactured under those rules. They did not state that any data that would be issued by the Association from [fol. 510] time to time or sent to be enclosed in the freight rate books would be binding upon us, nor that our discretion in the operation of our business would in any wise be interfered with. There was nothing said about where we should sell our flooring or to whom or for how much.

"Q. Why did you want to join the Maple Flooring Manufacturers Association?

A. Well, I think the principal reason was that we wanted to sell our stock under the Association grades. We realized that those were the grades that would be specified in that market and by joining the Association we were enabled to get right into the business and compete with other people who were selling Association grades. We had no experience up to that time in manufacturing maple flooring. We had no experience as to the costs of manufacturing or anything of that sort, and of course we were able to get from the Association.

Q. State what you did with respect to getting some member of your Association or some of their employees to come there to your plant.

A. Well, our company there at Traverse City had furnished large quantities of rough lumber to members of the Association, that is, we sold our rough lumber there to them, and one of them volunteered to send his flooring superintendent down there to install our ma-

chinery. He came down there, I guess he was there two months and he brought his flooring grader along with him and he instructed our man there and the superintendent set up the machinery and taught our machine men how to manufacture flooring according to the standard of the Association as to matching and all that, uni-[fol. 511] formity.

Q. Did Mr. Robertson, the official inspector of the Association come to your plant too?

A. Yes, as soon as we got nicely into making flooring I asked Mr. Keehn to have him come down there and report on our grades. He came down there and stayed there several days, went into the matter very carefully. He took some of the oldest flooring we had, of course none of it was very old at that time, he took some that had been manufactured a month or so and some right from the machines and broke open those bundles and spread them out and went over them carefully and analyzed them and he spent a lot of time with our grader showing him just why certain defects would go in one grade and wouldn't go in another and etc., and after he got through he made a detailed report showing just how much there was in each grade, covering each grade, showing what percentage of it below or above the standard.

Q. Has he made trips, periodical trips since that time?

A. Yes, sir.

Q. You say Mr. Robertson made a report, a written report?

A. Yes, sir.

Q. What did you do with that report?

A. I had some copies of it made. It was a very favorable report. It showed that our grades were very close to the standard as maintained by the Association.

Q. Did you use that report as a selling argument—state what you did with respect to that.

A. I used it as an argument to convince my customers that our flooring was standard.

[fol. 512] Q. I understand you had some conversation with Barr or some of the big dealers in Boston and Philadelphia, they didn't know about this report as I understand it, first questioned your ability to make flooring?

A. Yes, they did.

Q. I wish you would state that to the Court.

A. They knew that we had not been manufacturing flooring only a very short time and it took considerable argument to get them started, to get them to order some of our flooring. After we had sold them a few cars they knew then that it was all right."

We were located at Tupper Lake a year or two before we began to manufacture maple flooring. Before we began the manufacture of flooring we sold our rough lumber—quite a lot of it to local flooring manufacturers, such as the Blount Lumber Company at Lacona, New York, between Syracuse and Watertown. I think they had three or four machines. We also sold rough lumber to the Emporium Company whose plant is located at Conifer, New York. They have two or three machines, about the same size floor-

ing plant as we now have. We also sell rough lumber to the Shepherd Morse Lumber Company of Boston, whose flooring mill is located at Burlington, Vermont, and also to the J. R. Booth Lumber Company, Burlington, who manufacture a large quantity of flooring. The Shepherd Morse Company has three or four machines, but the Booth Company manufactures larger quantities of flooring and buys most of its lumber from Canada. We also sell rough lumber to C. H. Swift Company of Utica, New York, who have a flooring mill with, I think, two machines. We sell most of our flooring in Boston, [fol. 513] New York, Philadelphia and other points in the same territory. We sell our flooring there because they are the broad basic markets of the east. There is a lot of flooring used there, and we also sell our rough lumber there very largely, and of course, it is easier to sell our flooring in the same market in which we sell the rough lumber.

Flooring is shipped into these markets from practically every producing territory in the country. They even ship large quantities of fir flooring from the Pacific Coast by way of the Panama Canal. Oak flooring comes from all points in the south. Maple flooring comes in there from West Virginia, Tennessee, Michigan, Wisconsin, New York, the New England States, Canada and Pennsylvania, although there are not many mills in Pennsylvania. Hard pine flooring also comes in there in direct competition with hardwood flooring.

We could ascertain the cost of our flooring f. o. b. mill and then add the freight rates to New York and figure on that basis for our flooring, but if we did we wouldn't get any business. Manufacturers can't do that if they want to get into those markets with flooring because the freight rates from any one section won't control the prices. There are so many points from which flooring is coming in there. The manufacturer must get all the information he can as to what prices are being made in those markets, not only on maple flooring or beech or birch, but on oak, pine and every other kind that comes in competition with the flooring he desires to sell. The manufacturer must sell his flooring in New York at what it will bring there if he wants to get into that market. He must begin there to figure and work back to the flooring mill and find out [fol. 514] whether he can get into those markets rather than begin at the mill and work the other way.

I am in charge of the sale of our flooring. Our commissions range all the way from nothing to \$4.00 a thousand. When we joined the Association there was nothing said about our maintaining any standard scale of commissions or limiting our discretion as to when or how much commissions we should pay. We have at all times considered that we were free to do as we pleased with respect to commissions. We have followed no uniform rules with respect to commissions. We sell largely to jobbers and wholesalers and to some big yards, who maintain a force of floor layers who both sell flooring and lay it. We occasionally sell to contractors and consumers direct. For instance, we sell Stone & Webster, Boston contractors, who used the flooring in a building for the Victor Talking

Machine Company of Camden, New Jersey. In the sale of our flooring I have not observed that there has been any uniformity of prices for flooring in the markets where we do business. We have observed no uniform prices ourselves. I have not observed that there was an absence of competition either with respect to prices or with respect to the quality of maple, beech or birch flooring.

“Q. I wish you would give the Court some idea of the conditions that you meet there in the sale of your flooring in those markets, what you come in contact with and what competition you have to meet.

A. Well we are in daily correspondence with the big jobbers down there and we get information from them and very often as [fol. 515] to what others are quoting. If our prices are too high they don't hesitate to tell us so, and tell us why we can't get the business, and whenever I go down there why I go to see them and talk these matters over with them, and they usually show their cards on the table and tell me what prices I have got to meet in order to get certain business. That is the way I go at it usually.

Q. State whether or not your flooring there comes in competition with the Canadian, West Virginia and the stuff from Canada, and Tennessee?

A. Yes, sir.

Q. And the local New York Mills there?

A. Yes, sir.

Q. And how do you know it comes in competition?

A. Well because I see their quotations.

Q. Do you sell every order that you go after?

A. No.

Q. Now I believe you have some people, jobbers, to whom you sell at these points.

A. Yes, sir.

Q. State whether or not you allow them any discretion as to meeting competition at certain times?

A. Very often I do. If it is an item that I have got a hundred thousand feet of, or a surplus, something that is piling up, and I want to sell it, I tell them that they can use their own judgment, that is, within certain limits, but that stuff has got to be sold and if you can get within a certain figure, to take the order, and not bother to come to me about it. On the other hand, if it is something I have no surplus of, why I would tell them those prices must not be reduced without taking the matter up with me.

Q. Do you issue any price lists?

A. We haven't issued any for three or four months I guess or more.

Q. Have you yourself any uniform prices to give on any one item [fol. 516] of flooring on one day?

A. No, sir.

Q. Would you quote different prices on the same item and in the same market on the same day, or would you in the selling of your product, would you demand one price in that territory?

A. I have often done that, I have often sold stock on the same day at different prices, that is, the same grade of stock and the same kind.

Q. And in the same market or different?

A. In the same market. Possibly in one case we sold to a large jobber who would make me an offer at a certain price, and it may be in the other case it would be a retailer who I was able to get a little better price of.

Q. Why is it impracticable to put a price on your flooring and hold for that to everybody alike in all the markets, or in any one market?

A. Because you have got to meet competition in order to sell your product. Competition is keen in the east, flooring comes from so many different localities, that you have got to find out what others are doing in order to know what prices can be obtained.

Q. The manufacturer has got to meet his payroll too and keep his plant running, hasn't he?

A. Yes, sir.

Q. How does your company manage? You spoke something about a budget.

A. Why we go at it in the first of the year and we know what items of expense we are going to have, we figure it out as nearly as we can, and the interest on bonds and taxes and insurance, and overhead of all kinds, payments for timber which are coming due at certain times, and we set up reserves to cover those items, and [fol. 517] then we go at it and make up a budget showing how we are going to meet those items, and we take it up with the various departments, sales department, my department, and they ask me how much I can produce in the way of sales, as to my estimate, and I tell them, and they go at it and know what they have got to have in the year, and they make up a budget showing what each department is supposed to furnish every month to take care of that. My budget at the present time is fifty thousand dollars every four weeks.

Q. You take the requirements of your budget into consideration in moving your stock?

A. Yes, sir. We may disregard it for one month or two months, but in the end we have got to get that money from somewhere.

Q. And you get it by moving your flooring?

A. Yes, sir.

The Court: Are you fortunate enough so that you do not have to take those matters into consideration with your bankers?

A. We have to take them into consideration with our bankers, yes, sir.

The Court: I suppose that then, or to that extent, is one of the reasons why you make up your budget?

A. One of the reasons.

The Court: In order that your banker may know how much money you are going to require.

A. Yes. We have a certain line of credit with different places you know, with the banks, and that comes due at various times, and we have to meet it.

Q. As you explained, you plan your operations and know in advance that each department is required to bring in so much money.

A. We are asked to do that, yes, sir."

[fol. 518] I think the statistics that are furnished our Company by the Secretary of the Maple Flooring Manufacturers Association are very valuable.

"A. The weekly reports are valuable as showing a trend of the market, whether the prices are going up or going down, and another valuable feature is the amount of sales, that enable us to know approximately how much of each grade for instance has been sold within a certain time.

Q. Do you regard the prices there more or less important than the statistics with regard to volume?

A. I think the statistics in respect to volume are fully as valuable as the price statistics, because oftentimes it does not matter to me what somebody in Michigan is getting in prices; if I know my competitor who lives eleven miles from me is getting two dollars less than my figures show, that would influence me more than what I might see in the sales reports.

The Court: And in that same connection I take it that the competition which you meet from your locality, and when I say locality I mean that part of the country, is more potent than the competition which you meet from Wisconsin or Michigan.

A. Yes, sir, because—

The Court: That is because of the freight rates, isn't it, and the difference?

A. Yes, and because those people are—their customers in many instances are my customers. They live in the same territory and they ship to the same points.

[fol. 519] Q. Well how old are these statistics when they are received by you?

A. Well usually about ten days or two weeks.

Q. And I believe you say you kept in constant touch with respect to prices, etc., in Boston, New York and Philadelphia, by means of correspondence and telephone?

A. We have representatives in all those markets that keep us informed constantly by phone and letters.

Q. You say they are about two weeks old when you get them?

A. Ten days to two weeks. They are sent in for instance Saturday and Mr. Keehn compiled them and they are sent out along the middle of the week something or in there; usually about ten days or two weeks after the transactions.

Q. Besides these weekly reports what other sources of information do you have, besides the reports from the wholesales, the jobbers, and the personal representatives?

A. Well we have quotations which are made in the trade papers every week.

Q. I wish you would state for the benefit of the record just what data is published in the trade papers with respect to the prices.

A. For instance, I imagine the paper is published in St. Louis, that gives reports every week from each one of those markets, say Boston,

and they give the freight rates on various commodities, lumber, into that territory from the different producing sections, and then they [fol. 520] give the prices, list of the prices that stock is being sold at and very often other commodities, as to that items are going up or what items are going down, etc.

Q. What other periodical publishes these data?

A. American Lumberman.

Q. American Lumberman.

A. Yes; the New York Lumber Journal, and Hardwood Record.

Q. About what percentage of your business would go, would be handled by jobbers and wholesalers?

A. Oh, I should say ninety per cent.

Q. Beg pardon.

A. Ninety per cent.

Q. State whether or not these jobbers and wholesalers take these papers that you have mentioned?

A. Yes, many of them do.

Q. They are generally informed with respect to market conditions?

A. Yes.

Q. Those papers that you mentioned there, they state the market conditions in about eight or nine or ten different markets in the United States, the principal centers of consumption, do they not?

A. They are more than that.

Q. They are; they cover the United States.

A. They publish specific reports for Boston, New York, Philadelphia and all those large markets.

Q. Now do you regard the information contained in these reports sent out by the Secretary of the Association as of major importance or as controlling in what you shall do with respect to your own prices or production?

[fol. 521] A. No, sir.

Q. What do you regard them as?

A. Well I think the most potent factor is the condition of my stock at the time.

Q. Do you regard the statistical information as one factor, if you don't regard it as of controlling importance? I would assume then you would regard it is one of many factors.

A. Yes, sir.

Q. In looking over those sales reports what would you take into consideration, what else would you take into consideration in determining what your own prices would be?

A. Well in the first place I think I would take into consideration the economic situation, that is, the general trend of the market, whether it was up or down, and then I would take into consideration my own particular stock conditions. If I had a surplus of some one item and wanted it moved, why I would be apt to make a lower price, particularly if I saw that some one else was making a lower price on that same item. On the other hand, if the general trend of the market was upwards and I had no accumulation of that stock and I saw somebody was getting more money than I was, it may tend to influence me to raise my prices."

I would also consider my own budget at that time, our plan of operation of the flooring department, whether we were running nights and days or days only or expected to shut down for repairs or anything like that. I would also consider the labor conditions at our plant and our plan of operations for our logging department, political [fol. 522] conditions, etc. The mere fact that someone else was charging higher prices or lower prices than I had been would not automatically cause me to lower or increase my prices. I would consider my own stock and the other conditions above mentioned. The fact that someone else was charging higher or lower prices than I was would be considered as one factor and would be given consideration by me.

We own our own stumpage in the Adirondacks. I have given the figures to Mr. Keehn. I should say offhand that we own about 150 or 175 million feet of maple, beech and birch stumpage at the present, about 46% of which would be maple, 40% birch and 20% beech and other hardwoods. There is also a certain amount of elm, ash, basswood and cherry.

Our membership in the Association has been of benefit to us. The chief benefit, I think, was that it enabled us to get right into the business on the same basis as other Association members and to make standard grades of flooring that were being required.

"The Court: Just there, do you mean by that, do I understand that there is any secret about the grades and the sizes manufactured by the members of this Association?"

A. None whatever your Honor.

The Court: That is public property is it not?

A. Yes.

The Court: Any manufacturer can get it.

A. Yes.

Q. The grading rules of the Association are copyrighted are they not?

A. I believe so, but anybody can get those rules.

[fol. 523] The Court: Do you mean by that, that by your copyright you are prevented from manufacturing those grades or using the rules of grading?

A. No, what I meant was that practically all the specifications for large buildings or any job of any size that are sent out, specify that the stock must be graded according to Association rules, and we felt it would be a great advantage to us to be able to—we didn't know anything about the Association rules—to be able to make those grades and to say that our stock was manufactured under the M. F. M. A. trade mark and guaranteed by the Association. This would not be so much benefit to us now, because we have established a reputation for our flooring, but it was a great benefit to us at that time.

Q. State whether or not Architects and contractors and jobbers often prefer the product manufactured by the members of the Association because it is guaranteed and because the grades are carefully kept up to the standards?

A. Yes, sir.

Q. Now without being a member of the Association, of course you

would not have had the assistance of Mr. Robertson and the inspection, or his statistics.

A. No.

Q. And you would have had to experiment more or less in the manufacture of flooring.

A. Yes, sir.

Q. Which would have cost you a lot of money. Now how about the reinspection service?

A. I don't remember of having ever used that.

[fol. 524] Q. You consider it an important factor of protection, don't you?

A. Yes.

Q. Give some illustration of wherein it would come in handy, or be of benefit to you.

A. Well if we should have a dispute over the grades of flooring, why it would be referred to the official inspector and he would come there and go over it and ascertain which side was right.

Q. State whether or not some jobbers or wholesalers prefer to buy the product of a member of the Association because he has that inspection service to protect him as between the manufacturer and the buyer.

A. Yes, sir.

Q. How about the field representative work, how about the field representative work by Mr. Robertson, I wish you would state as to that.

A. Why I think that is very valuable. He goes to these various markets and gets in touch with the architects there and finds out what kinds of flooring are being used in that particular market, he gets a list of the public buildings that are being constructed, schools, various things of that kind, and that information is all sent out to the members.

Q. How about the advertising done by the Association, is that a benefit?

A. That is very valuable I think.

Q. Why?

A. Well because every association is advertising, the oak flooring association are spending a vast amount of money in the eastern territory to advertise oak flooring.

[fol. 525] Q. How about the Linoleum people?

A. The linoleum people are very active, they do more advertising than anyone else I know of down there.

Q. And various synthetic floorings and other woods?

A. Yes, sir.

Q. Could the manufacturer meet the propaganda and advertising carried on by the Associations of competing woods and other sorts?

A. No, we could not.

Q. Do you consider that the guaranty of your quality by the Association is a valuable asset to your company in the sale of your flooring?

A. We think enough of it so we specify in all of our advertising that we are members of the Association.

The Court: Right there, let me ask you a question. Does that enable you to, or do all of these benefits which you have enumerated, enable you to get a better price for your flooring than you would otherwise be enabled to get, or does it enable you to sell more flooring than you could otherwise sell, or does it benefit you in both ways?

A. I think it does, your Honor, benefits us in both ways.

The Court: That is to say it enables you to sell more flooring and to obtain a better price.

A. We are situated a little differently from some of the rest of them; we are the only Association member in the east, and that fact helps us in getting business, no question about it.

[fol. 526] Mr. Darby:

Q. The Association has paid a great deal of attention, in advertising, to the quality of its product?

A. Yes, sir.

Q. And advertises the fact that it is guaranteed and there is re-inspection service. State whether or not some dealers will pay more and some architects prefer to specify the product manufactured by the members of the Maple Flooring Manufacturers Association because of these things?

A. I think so.

Q. How about the exchange of manufacturing experience, when you come in contact with these other manufacturers, have you found that helpful?

A. Very helpful, especially valuable on the start; we had no experience in manufacturing maple flooring whatever and we were able to get some very valuable information.

Q. How about these test runs and the average costs reports, have you found them helpful?

A. Very helpful.

The Court: Just in what way?

A. Well the average cost reports are made up in detail showing what each operation costs all the way through. We kept all our own cost figures and we were able to check them with these, and if we found an item of cost that was abnormally large we were able to check it up and look into it and find out where the trouble was and correct it. We had no experience and some of our costs were abnormally high at the start.

Mr. Darby:

Q. Do you believe that the activities of the association have reduced the cost of manufacture or raised it?

A. Reduced the cost considerably.

[fol. 527] Q. They pay a great deal of attention to the cost of manufacture?

A. Yes, sir."

I don't remember just how many meetings were held in 1921 after we joined in August. There could not have been more than two or three and I don't recall whether I attended all of them.

[fol. 528] Q. I believe that your firm did not actually sign the articles of association then in effect.

A. Beg pardon?

Q. You didn't sign the—actually sign the articles of association that were then in effect, the articles of association.

A. I presume we did when we joined.

Q. 1921? Did you sign them, did your firm execute the articles?

A. Articles of Association?

Q. Yes.

A. I imagine we did.

Q. You have no recollection of that.

A. No.

Q. Well at that time were you informed there was any minimum price plan in effect?

A. No, sir.

Q. Or any minimum basis.

A. We were informed that they tried to put such a plan in effect along the earlier part of the year, January I think, but the Government didn't approve of it and it never had been put into effect.

Q. Was there any allotment plan in effect then?

A. No.

[fol. 529] I attended the meetings in 1922. There was no understanding or agreement there at any time with respect to the future prices of maple flooring. I perhaps attended two-thirds of the meetings during 1922. I haven't attended so many this year as I did last because we were busy and it wasn't convenient for me to do so.

"The Court: Now during 1922 at these meetings which you attended, was there any discussion of market conditions, trend of the market, prices realized?

A. I don't recall any such discussions in the meetings. We had reports of costs committees, of course, on rough lumber and manufacturing costs and things of that sort.

The Court: You certainly discussed those did you not?

A. Yes, sir.

The Court: Can you tell me why? Was not the natural discussion of market conditions, the market trend, the outlook?

[fol. 530] A. Yes.

The Court: That would have been the most natural thing to consider for a body of men engaged in that business, and discuss?

A. Yes.

The Court: Will you tell me why there wasn't any discussion of it?

A. Well I think that after the decision of the Supreme Court about those things that our attorneys advised us that those things were not to be discussed; I don't recall.

Q. But you did discuss the past transactions did you not?

A. Oh, yes.

Q. And the cost of rough lumber and manufacturing costs and the advertising campaign was discussed?

A. Yes, sir.

Q. And traffic questions would come up, but those of past transactions, I understand, you discussed.

A. What do you mean?

Q. These reports which would show what—the monthly reports of the Secretary.

A. Oh, yes.

Q. But there was no understanding or agreement with respect to future prices.

A. No, sir.

The Court: What benefit did you derive from discussing past transactions?

A. Well we were enabled to find out how much stock of certain grades had been shipped and what had been obtained for it, that was valuable information.

The Court: What was the benefit of that?

[fol. 531] A. It shows what stock was being moved at the time.

The Court: Well it enabled you to forecast what was going to happen in the future?

A. To a certain extent.

The Court: And that was the only benefit?

A. To a certain extent, yes, sir.

Mr. Darby: Q. It enabled a man to form an opinion rather as to what the future might be.

The Court: That is what I meant.

Q. There wasn't any vote taken by the Association as to what the Association can get, any expression of opinion by the Association as to what the future condition would be.

A. No.

Q. And as to market conditions, no cost surveys committee ever attempted to forecast the future or make any recommendation of any kind with respect to market conditions.

A. No, sir.

Q. Or price.

A. No, sir."

Cross-examination.

By Mr. Fowler:

Q. In regard to those meetings, you say you attended how many in 1922?

A. 1922?

Q. Yes.

A. I don't know exactly, Mr. Fowler, I think about two-thirds of the meetings, I imagine.

Q. They met monthly?

A. Yes, sir.

Q. How far is Tupper Lake from Chicago?

A. Oh, it is probably 900 miles, something like that.

[fol. 532] Q. How long would you be in session there at Chicago?

A. One day usually.

Q. When you had those meetings you had these weekly sales reports before you, didn't you?

A. Yes, sir.

Q. They were distributed around among you, weren't they?

A. Yes, sir.

Q. So that you would have them right before your eyes while you were going on with your discussions?

A. Sometimes they were.

Q. Mr. Keehn would send them out a few days before so you would have an opportunity to study them?

A. He sends them out regularly every week.

Q. Wouldn't he advise you to bring them with you, sometimes?

A. No, sir.

Q. Anyway, after you got there, he distributed them among you?

A. Possibly the last week's statistics, if they had not been mailed he would distribute them at the meeting.

Q. Distribute them monthly. These stock reports and shipments and things of that kind, you had them before you too, didn't you?

A. Yes, sir.

Q. So you had the whole situation there right before your eyes, every member during those discussions, did you?

A. We did not discuss them at the meetings.

Q. What did you have them before your eyes for? What were they distributed among you for, and why did you have them in the meeting if you did not discuss them?

A. Well, we could look them over; they were distributed to us there rather than to be mailed to us at our home.

[fol. 533] Q. Did you talk about them?

A. I beg your pardon.

Q. Did you talk about them?

A. No, we did not talk about prices.

Q. Well, what did you talk about then that was in those reports, if you didn't talk about prices.

A. About stock conditions, manufacturing costs, things of that sort.

Q. Now, Mr. Darby has suggested you talked about past transactions. The prices in all those past transactions were shown right there on the sheets, weren't they?

A. Yes, sir.

Q. Did you discuss those prices of past transactions?

A. No, sir.

Q. Didn't say one word about what had happened as to prices?

A. No, sir.

Q. Did you discuss the trend of prices, whether they had been going up or down?

A. Never.

Q. That was never mentioned?

A. No, sir.

Q. Well, now, outside of that meeting, sitting around there at

the lunch table when you were having that hilarious time, didn't you talk anything about it then?

A. I might have talked to my next door neighbor, the man sitting next to me, about whether he was manufacturing certain items of flooring; perhaps, in a general way, what conditions were with him.

Q. Wouldn't you ask him how much he was getting for it?

A. No, I would not, not unless I knew him pretty well, and the chances were that he would not tell me then.

[fol. 534] Q. Suppose you knew him pretty well, would you then ask him?

A. I might have asked him.

Q. Didn't you ask him from time to time, and weren't you told from time to time, how his prices were going, whether up or down?

A. No, sir.

Q. Didn't they ask you?

A. No, sir.

Q. Now, you mean to say, do you, that when it came to a question of price on past transactions that your mouths were simply shut, is that right?

A. I wouldn't say that entirely.

Q. But your eyes were open and you had the data all right there before your eyes?

A. We didn't have anything before our eyes when we were at the table, except the stuff on the table.

Q. You had these reports before your eyes?

A. No, sir.

Q. I thought you said they were distributed among you right there?

A. We might have had them, but we were not discussing them at these meetings.

Q. These Cost Survey fellows made their report, didn't they?

A. Yes, sir.

Q. Their report showed exactly what they estimated the cost to be of lumber, didn't they?

A. Showed the cost of rough lumber, f. o. b. mills, etc.

Q. That was discussed very fully by all of you, wasn't it?

A. Yes.

[fol. 535] If anyone asked me what, in my judgment, it cost to produce rough lumber, I would give my judgment. I don't recall that everyone else at the meeting would tell me what the cost of our lumber was. The Cost Committee reported on the cost of rough lumber as evidenced by the sales in the open market. The Cost Surveys Committee did not report on the cost of maple flooring. The Cost Committee was appointed to inquire into the sales of rough lumber that were being made and report them to the Association.

Q. When did you join the Association?

A. In 1921.

Q. When did you begin to manufacture Maple flooring?

A. In 1921.

Q. You joined immediately after you began to manufacture Maple flooring, did you?

A. I beg your pardon.

Q. I say, you joined immediately after you began to manufacture Maple flooring?

A. Within a short time, two months or such a matter.

Q. How much do you produce in a year?

A. About three million feet.

Q. And you are the only concern in that section of the country that belongs to it?

A. To the Maple Flooring Association?

Q. To this Association, I mean?

A. Yes, sir.

Q. Now in regard to those statistics, didn't you join this Association very largely to get the information that is contained in those statistics.

A. Yes, sir:

Q. Don't you use it all the time?

A. What do you refer to?

[fol. 536] Q. I mean all the statistics; don't you use them all?

A. Why, yes, certainly.

Q. Aren't you studying them continually with reference to your changing prices?

A. I wouldn't say that, but we do study them; we look them over whenever we get them and take them into account. That is one of the factors that determine our price.

Q. If it wasn't for those statistics you wouldn't belong to the Association, would you?

A. I don't think so; it would be of no value to us.

Q. Now, in regard to standardization. They don't require you to manufacture your lumber by a certain standard, do they?

A. Yes, sir; they do.

Q. Absolutely tell you to do it?

A. Yes, sir.

Q. Why don't they turn I. Stephenson Company, Trustees, out of the Association then, do you know? You have never heard that discussed, have you?

A. I didn't know that their flooring was materially different from other members of the Association.

Q. They do not prohibit anybody else from manufacturing according to that standard, do they, those that do not belong to it?

A. No.

Q. Anybody can manufacture that size of lumber that wants to, can't they?

A. Yes, but the Association does not guarantee it.

Q. Just the guarantee by the Association. A man can guarantee his own lumber that is of that standard, can't he?

A. Yes, sir.

[fol. 537] Q. You have got a good reputation, your firm has had?

A. I think so.

Q. That it makes what it represents it does?

A. Yes, sir.

Q. And you can give your guaranty that you are manufacturing your lumber certain dimensions, can't you?

A. Yes, sir.

Q. Your machinery had to be readjusted, did it, so as to manufacture according to this standard, or did you ever manufacture according to any other standard?

A. No, sir.

Q. Did you buy new machinery when you began to manufacture Maple flooring?

A. Yes, sir.

Q. Well, when they set the machinery up, the factory that manufactured the machinery always sends a man along to set it up, don't they?

A. I don't think they did in this case.

Q. They would if you asked them to, wouldn't they?

A. Probably, yes, sir.

Q. And the machinery could be adjusted to manufacture any thickness, couldn't it?

A. Yes, sir.

Q. You could have adjusted the machinery to manufacture according to the standard prescribed by the Association? Couldn't you?

A. We could, if we knew enough about it to do it.

Q. Couldn't you ascertain what these standard sizes were?

A. That is what we joined the Association for, to find out.

Q. Couldn't you have found out without joining the Association?

A. I don't know, I presume we could.

Q. Did you try?

A. No, sir.

[fol. 538] The Court: Take your competitors in that section of the country, are they manufacturing these standard sizes of flooring?

A. Yes sir.

The Court: And the same grades?

A. They are very similar to the Association grades. They differ in respect to lengths, but the general character of the grades are the same.

The Court: Aside from "shorts" the lengths are the same the country over, aren't they?

A. Yes.

Q. Are all those concerns that you mentioned a while ago still manufacturing Maple flooring?

A. I believe so; yes, sir.

Q. And they all manufacture the Association grades, don't they?

A. What concerns do you refer to?

Q. I don't remember their names; you mentioned a number of them that you used to sell your rough lumber to.

A. None of them belonged to this Association.

Q. I say, are they still in business?

A. Yes, sir.

Q. They all manufacture Association grades, don't they?

A. No, they do not any of them manufacture Association grades.

Q. How?

A. No, none of them manufacture Association grades.

Q. Do you mean to say they do not manufacture the same dimensions you do?

A. Yes, the same dimensions.

[fol. 539] Q. But what you mean is that it is not graded according to the Association method of grading?

A. Yes, sir.

Q. Don't they manufacture "Clear"?

A. Yes, sir.

Q. And No. 1?

A. Yes, sir.

Q. And Factory?

A. Yes, sir.

Q. They do their own grading. Isn't their Clear as good a grade as yours?

A. I never have admitted that; sometimes it is pretty close to our grade. There is one concern that lives eleven miles from me; they sent to Michigan to get a superintendent that did understand and formerly worked for an Association member in order to be able to make a grade that would be as near as possible Association grade.

Q. You spoke awhile ago about not getting these prices until the expiration of about ten days or two weeks. A member sends in his report up until Saturday night, doesn't he?

A. Yes, sir.

Q. Those reports are tabulated and sent out by the Secretary by the middle of next week?

A. Probably.

Q. Then you don't get them the last of the week?

A. The following week, yes.

Q. Then you would get the information—the last information, the prices, you would get from another member would be about a week later?

A. Probably.

[fol. 540] Q. So far as Boston and New York points are concerned, all eastern points, you have an advantage over Wisconsin and Michigan freight rates, haven't you?

A. Yes, sir.

Redirect examination.

By Mr. Johnston:

The value to us of Association work with respect to grades is not in the sizes but in the inspection service and the keeping of our work up to Association grade. The grades, factory, No. 1 and clear are universal. They were not established by this Association or any other Association, but the different grades are defined by the Association.

Recross-examination.

By Mr. Fowler:

Q. That standardization relates to the size of the lumber, and the other is the grading, is that the distinction?

A. I don't understand.

Q. One relates to standardization and the other to the grading?

A. Yes, sir.

Q. In this matter of grading, you always have a good grader, don't you?

A. Not always, no.

Q. If you were manufacturing flooring and did not belong to the Association, and you manufactured the stuff that you represented to be Clear, that would be Clear, wouldn't it?

A. Yes, sir.

Q. And the stuff that you represented to be No. 1 would be No. 1?

A. According to our understanding of it.

[fol. 541] Q. That is, you would grade just as carefully and as conscientiously and as honestly if you were outside of the Association as you do being inside?

A. Yes, sir.

Redirect examination.

By Mr. Darby:

If the jobber or architect differed from us with respect to grades, we would have to fight it out if one couldn't convince the other. [fol. 542] We couldn't obtain any inspection services unless we belonged to the Association. The people who buy from us do so on the understanding that the flooring will come up to the Association standard and is subject to reinspection service and the grading rules of the Association.

"The Court: I take it so far as the identification of papers is concerned it will not be insisted upon by either side that the witness be recalled for that purpose.

Mr. Fowler: There will be no objection to that."

Said papers marked defendants' Exhibits X, X $\frac{1}{2}$, X1 to X24, and received in evidence.

FRANK M. HODGES recalled to the stand.

"Mr. Darby: I would like to read a telegram of May 23, 1923, addressed to the Oval Wood Dish Company, Tupper Lake, New York.

DEFENDANTS' EXHIBIT X $\frac{1}{2}$

'Will you accept ninety-five net New York one car two inch face Clear Maple flooring quick shipment. Answer today.'

(Signed) 'Sam E. Barr.'

Telegram from the Oval Wood Dish Corporation, Tupper Lake, N. Y., May 24, 1923, to Sam E. Barr, 50 Church St., New York City:

DEFENDANTS' EXHIBIT X

'Two inch Clear Maple one hundred dollars net. No commission.'

Letter Sam E. Barr, Wholesale Lumber, 50 Church St., dated May 25, 1923, addressed to the Oval Wood Dish Co.:

DEFENDANTS' EXHIBIT X-1

'Received your wire yesterday morning advising that \$100 net is the best price you can make us on the car of 13/16 x 2" Clear Maple Flooring. I have therefore, placed my order with the other mill, who quoted me a lower price. I told Mr. Hodges that I would [fol. 543] gave him a chance to meet price which I would be quoted on this flooring, hence my wire to you. Please show this letter to him when he comes back from Chicago.'

Letter of October 16, 1923, from the Oval Wood Dish Corporation to Sam E. Barr, New York City:

DEFENDANTS' EXHIBIT X-2

'Your inquiry of October 15 is received, and we wired you as follows: 'Re yours fifteenth accept orders for both cars Maple flooring.' And now confirm.

This covers a carload of 13/16 x 2-1/4 No. 1 Maple flooring at \$100 delivered Brooklyn, N. Y. and less your commission of \$2.00 per M feet. These prices are low and we will not accept any more orders on this basis unless we are obliged to. However, we want to move a little stock as we go along and we will accept these two orders for immediate shipment.'

I should perhaps have read this inquiry of October 15th, 1923, first, from Barr to the Oval Dish Company:

DEFENDANTS' EXHIBIT X-234

'When Mr. Hodges was in the office the other day he told us that you had about 110 M feet 13/16 x 2-1/4 No. 1 Maple Flooring ready for shipment. I think we can get an order for one car 18 M ft., but we cannot get the order at your figure. The best price

the customer will pay is \$90.00. If you want the order please wire me and I will see if I can get the order for you, as the customer is now ready to buy it.

'We think we can also get an order for one car 18 M ft. 13/16 x 2 1/4 Clear Maple flooring at \$100.00 delivered Brooklyn, N. Y. [fol. 544] If you want orders for these two cars, I will handle them on regular commission basis. Thanking you for an immediate answer, as both cars for *for* immediate shipment, and you can turn your flooring into money, we remain very truly yours.'

Then the telegram from the Oval Wood Dish Corporation, dated October 16th, 1923, to Sam E. Barr, reading as follows:

DEFENDANTS' EXHIBIT X-2 1/2

'Re yours 15th accept orders for both cars Maple flooring.' "

A jobber or a wholesaler will very often submit orders to us at a price named by him.

"Mr. Darby: I should like to read a letter from Barr, under date of October 24, 1923, to the Oval Wood Dish Company:

DEFENDANTS' EXHIBIT X-3 1/2

'Please quote me your very best price delivered New York City one one car 13/16 x 1 1/2" Clear selected White Maple flooring, less regular commission, advising when shipment could be made if favored with order.

'Thanking you for immediate answer.'

Letter, October 25, 1923, from the Oval Wood Dish Corporation to Barr, reading as follows:

DEFENDANTS' EXHIBIT X-3

'Your letter of October 24 is received. We regret to say that we have no 13/16 x 1 1/2 Clear Maple in stock. We have a large carload of 13/16 x 1 1/2 No. 1 Maple, unselected for color, at \$70.00 per M feet, delivered New York, and subject to your commission, but we do not suppose that this will interest you.'

[fol. 545] Q. That letter is dated October 25, 1923. This book that I hand you, please state what that is?

A. It is a rate book of the Flooring Association.

Q. That you had on October 25, 1923?

A. Yes, sir.

Q. I wish you would read from the book the average cost of 13/16 x 1½ No. 1 Maple, f. o. b. cars at Flooring mill.

A. The price as stated here is——

Q. The price or the cost—the average cost. You are reading from what?

A. Reading from the average cost, sure.

Q. Reading from the average cost. It is so designated on the chart?

A. Yes, sir.

Q. Read from that now the heading in that book.

A. Average cost chart. Average cost 13/16 Maple flooring f. o. b. cars at flooring mill as per Survey of Cost, July 19th, 1923, for No. 1 13/16 x 1½" Maple flooring \$82.00.

Q. \$82.00 per M feet?

A. Yes, sir.

Q. How did you happen to quote this man \$70.00 per M feet?

A. Well, I had a year's accumulation of that stuff and I wanted to sell it.

Q. Does that move freely in the east or not?

A. It does not move at all.

White Maple is selected for color but No. 1 Maple is not selected as to color. What I was quoting him was the ordinary No. 1 Maple Flooring. I do not consider that the figures given on the average cost chart which were made pursuant to a survey of costs were to be used as price lists and I never made any such use of them.

[fol. 546] "Mr. Darby: Telegram, October 24, 1923, from Sam E. Barr to Oval Wood Dish Corporation:

DEF'TS' EX. X-4½

'Have order immediate shipment twenty-seven thousand one by three Clear Maple, one hundred dollars delivered Spring Lake, N. J. stop. Thirty thousand same width, thickness number one Maple ship about two weeks New York City, New York Central delivery eighty-seven. Wrote several manufacturers and have their reply. Can purchase their prices, offer immediate acceptance. Wire answer prices subject regular commission.'

Letter from the Oval Wood Dish Corporation, dated October 24, 1923, addressed to Sam E. Barr as follows:

DEF'TS' EX. X-4

'Your telegram is received, and we have wired you as follows: 'Your telegram 24th accept both orders.' And now confirm.'

This covers twenty-seven thousand feet of thirteen sixteenths x 2¼ Clear Maple flooring at \$100, less commission, delivered Spring [fol. 547] Lake, N. J. for immediate shipment. Also 30 M feet

of 13/16 x 2¼ No. 1 Maple Flooring for shipment in two weeks at \$87.00 less commission, delivered New York City. We are satisfied that the stock can be purchased for these prices, and are, therefore, meeting the competition. However, we do not believe we want to accept any further orders on this basis.'

I would like to introduce a Mill Order from Sam E. Barr, being order number 4221, made to the Oval Wood Dish Corporation on Barr's letterhead, wherein, after specifying the commission and the price and the grade and dimensions or face of the flooring, the following words are added:

DEFENDANTS' EXHIBIT X-5

'Flooring to be thoroughly kiln dried, side and end matched, hollow backed and graded according to MFMA rules.'

Barr always specifies that flooring is to be manufactured according to M.F.M.A. rules.

"Mr. Darby: A letter from the Jones Hardwood Company, 161 Devonshire Street, Boston, dated August 4, 1923, addressed to Oval Wood Dish Corporation:

DEFENDANTS' EXHIBIT X-5¾

'I have just been offered an order f. o. b. Newburyport, Mass. as follows:

12,000' 13/16 x 2¼ Clear Birch flg. at \$96.00.

6,000' 13/16 x 3¼ #1 Birch flg. at 78.00.

The car to contain if possible, 3,000' of ¾" x 2" face, Clear Birch flooring at \$59.00. The market seems to be in rather a fluctuating condition. But we would like to know by wire Monday whether or [fol. 548] not you care to accept this order and as to time of shipment.'

Telegram, dated August 6, 1923, from the Oval Wood Dish Corporation to the Jones Hardwood Company, Boston, Mass.

DEFENDANTS' EXHIBIT X-5½

'Will accept Newburyport order without three-eighths Birch '

Letter from the Jones Hardwood Company of Boston, dated August 27, 1923, addressed to the Oval Wood Dish Corporation:

DEFENDANTS' EXHIBIT X-6 $\frac{1}{2}$

'We seem to be losing out on whatever few inquiries we get on Birch flooring by several dollars per thousand. When does Mr. Hodges expect to be down here? I would like to go over this situation with him carefully, although there does not seem to be much call now for anything in the flooring line.'

Letter from the same corporation to the Oval Wood Dish Corporation dated October 29, 1923:

DEFENDANTS' EXHIBIT X-6

'At the time our order #832 of August 31st was placed with you for a carload of 13/16 x 3 $\frac{1}{4}$ " face, matched, #1 Birch flooring, the list price was Seventy-nine seventy-five Boston. I took the matter up with you by telephone, and you made a concession of \$2 per M off of that price, in order that we might send you the business.

In making out the order it was sent out at the regular price 77.75 less \$2 per M commission, and in auditing our accounts, I just run across that and also the fact that the duplicate of the order which was #915, of September 20th, was sent in the same way.

Now, as we allowed the Wyman-Allen Lumber Co. their wholesale commission of \$2 per M we are out of pocket, or rather we [fol. 549] have no profit at all in those two transactions. I wish you would look into the matter and see if I am not correct. We really should have sent you the order at \$75.75 less \$2 per M commission.'

"Q. I see some of the letters here from them asking for your pricelist, some of them do. Do you occasionally send out pricelists?

A. We formerly sent them out; we have not sent out any lately.

Q. With \$2.00 off the list price, was that?

A. That was my list price delivered Boston.

Q. Your list price?

A. Delivered Boston. I have forgotten the date.

Mr. Darby: Letter Jones Hardwood Company, dated December 7, 1922, addressed to the Oval Wood Dish Corporation, reading as follows:

DEFENDANTS' EXHIBIT X-7

'On receipt of your wire with reference to the #1 3 $\frac{1}{4}$ " face Maple flooring, we immediately called our customer, but he lost the business. He had a quotation from a Michigan concern of \$78.00 delivered so that we are out of it anyhow, but even at this his competitor got the business on a closer basis, possibly we may get an order on this stock elsewhere subject to prior sale.'

Letter, April 6, 1922, from the Jones Hardwood Company to the Oval Wood Dish Corporation:

DEFENDANTS' EXHIBIT X-8

'I thank you for your new stock list on both the flooring and hardwood lumber; I am also very much interested in the price list on the lumber and I cannot see how it is possible for you to get these prices here at the present time. We are unable to obtain such prices from the trade we have and it seems to us that your hardwood [fol. 550] price makes it cost, delivered, much more than we would have to pay if we bought from Michigan or Wisconsin; in fact, we know that is the case.'

We note that you have a considerable quantity of 2¼" face, Clear Maple flooring. Is the price still \$99.00 delivered, Boston rate, subject to our commission? One of your neighbors unloaded quite a bunch of 3¼" face, Clear Maple flooring delivered here at \$80.00.

We still have a car of No. 1 Flooring to come from you, but the going price seems to be about \$71.00 and we have not been able to sell it at cost. We hope to do so within the near future, but not right at present.'

Letter, May 27, 1922, from the Jones Hardwood Company addressed to the Oval Wood Dish Corporation, reading as follows:

DEFENDANTS' EXHIBIT X-8¼

'Your letter of May 23rd with new price and stock list came to hand while I was away, and I would like to know if these new prices are subject to the special arrangements for discount which you gave me when you were here last. I want to know about this as we are quoting prices continuously and want to be sure where to place the business. It seems to the writer that your price on 2¼" Factory of \$39.50 is pretty stiff. The Western mills as a rule, are asking \$34.50 less commission, while your price on the 3¼" face Factory is lower than theirs somewhat.'

Letter from the Jones Hardwood Company of Boston, dated May 2nd, 1923, addressed to the Oval Wood Dish Corporation, reading as follows:

DEFENDANT'S EXHIBIT X-8¾

'I have at hand your price list of April 24th. I still think you [fol. 551] are much too high on your Birch and Beech Flooring prices by \$5.00 per M on #1 and Clear grades. I have some quotations out on the 2¼" Clear Beech at \$98.50. If they come in, I can place them with Michigan at a profit.'

Letter, May 3, 1923, from the Oval Wood Dish Corporation, addressed to the Jones Hardwood Company, Boston, reading as follows:

DEFENDANTS' EXHIBIT X-8½

'Your letter of May 2 is received, and we note what you say about Beech prices.

'We have a quantity of 2¼ Clear Beech on hand, and will accept some orders from you at \$98.50 to meet the Michigan prices, providing that the stock can be shipped promptly.

'On the 2¼ #1 Beech, however, we would not want to make any concession as we have none of it in stock, and probably will not be able to make any for some time.'

Letter, August 1, 1923, from the Jones Hardwood Company, addressed to Mr. F. M. Hodges, Hotel Parker House, Boston, Mass., reading as follows:

DEFENDANT'S EXHIBIT X-9½

'Enclosed you will find order 801 for a less than carload lot shipment to Thompson, Morris Co., Boston, Mass., which please arrange to get off immediately. I am also enclosing an order for a mixed car of Clear and #1 2¼ Birch flooring for shipment August 10th. I have just been advised that one of our customers has a telegram from Michigan advising that they would take orders for five cars of Clear 13/16 x 2¼ Maple flooring, delivered Boston at \$103.50, or #1 at \$93.50. Apparently, there is considerable cutting going on.'

[fol. 552] Letter, August 4, 1923, from the Oval Wood Dish Corporation addressed to the Jones Hardwood Company, Boston, Mass.:

DEFENDANTS' EXHIBIT X-9

'We acknowledge receipt of your orders Nos. 710 and 801, given our Mr. Hodges while in Boston, and have entered these orders for shipment as specified.'

"The Court: I notice this correspondence is something that has occurred since the commencement of this suit.

Mr. Darby: Some of it, and some of it did not.

The Court: Most of this that you are reading now, seems to be in 1923.

Mr. Darby: Yes. Some of it, however, was in 1922. Here is one in February before the institution of this suit. However, I can introduce them into the record without reading them all."

(Correspondence marked Defendants' Exhibits X to X 24 and received in evidence.)

The correspondence that has been read into the record is typical of our experience in the sale of flooring. From our correspondence we learn what other mills are quoting and sometimes we lower our price and sometimes we are unable to do so. Sometimes the purchaser will name a price or a commission man offers to accept an order at a certain price.

The Defendants' Exhibits X to X-24 not heretofore set forth are as follows:

Letter, dated July 28, 1923, from Oval Wood Dish Corporation to F. W. Baird, 401 Chamber of Commerce, Boston, Mass., reading as follows:

[fol. 553] DEFENDANTS' EXHIBIT X-10

"DEAR SIR: Your letter of July 26th, is received, and we regret that our prices were too high to secure the car of Birch flooring. We know that some manufacturers are cutting prices but do not think that they will continue to do so very long as there is no surplus of Factory flooring. We are glad to have this information and [fol. 554] will be glad to have you furnish us with any authentic quotations that are lower than ours.

With kindest regards, we are."

Letter, dated July 26, 1923, F. W. Baird, Boston, Mass., to Oval Wood Dish Co., Tupper Lake, N. Y., reading as follows:

DEFENDANTS' EXHIBIT X-10½

"Gentlemen: Thank you for your wire on the 24th. 2¼" face Birch Factory flooring.

I regret very much to advise that the customer considered the price too high and so, of course, we could not get the order.

We thank you just the same for quoting us.

Yours truly."

(P. S.)—"Some one has offered him a car at \$52.00. F. W. B."

Letter, dated February 1, 1923, from Oval Wood Dish Corporation to F. W. Baird, Boston, Mass., reading as follows:

DEFENDANTS' EXHIBIT X-11

"GENTLEMEN: Your letter of January 30 is received.

We are enclosing herewith our credit memorandum for an additional \$2.00 per M feet on the recent car of Clear Flooring shipped you of 25,500 feet. This is as you state in accordance with your conversation with our Mr. F. M. Hodges in your office.

[fol. 555] We are hoping that you will be able to secure this order for 2¼ Clear Beech Flooring.

Yours very truly."

Letter from F. W. Baird, Boston, Mass., to The Oval Wood Dish Corporation, Attention F. M. Hodges, Tupper Lake, New York, dated January 30, 1923, reading as follows:

DEFENDANTS' EXHIBIT X-11½

"DEAR SIR: We have just received and settled for the first car of 25,500 ft. on the Boston College order of which I spoke to you when you were in the office not long ago.

We made a little concession to the College people so that we might get the balance of about 100 M feet, when the building was ready to receive it. When you were here in the office you made a concession on this order of an additional two dollars per thousand feet, but I think we made no notation of this fact on our order, consequently we are paying the bill as per your invoice, and I was wondering if you would call this matter to the attention of your Treasurer and have him give us credit for the additional two dollars per thousand on this 25,500 ft.

We have an inquiry this P. M. for 150 M ft. 2¼" Clear Beech flooring and I have wired you asking if you could entertain such an order. First two cars to be shipped about March 1st, and the balance a car every 10 days or two weeks until the order was completed. I have not quoted a price because I was afraid your prices might have [fol. 556] changed and my wire, I have asked if you could supply and also price. I hope you can furnish this order, provided that we get it and I think we could get it at the old price quoted by you November 18th on 2¼" Beech flooring.

Yours truly."

Letter, dated May 16, 1923, Oval Wood Dish Corporation to Boyd-Sinclair Lumber Company, 30 Church Street, New York City, reading as follows:

DEFENDANTS' EXHIBIT X-12

"GENTLEMEN: Your telegram of May 16 is received, and we wired you today as follows:

'Accept one car three and quarter Factory Beech immediate shipment sixty dollars delivered Boston.'

and now confirm.

Undoubtedly you are aware that Flooring stocks are moving rapidly and we, therefore, would ask you to forward your formal order for this car promptly.

Thanking you for the inquiry, we are."

Telegram, dated Tupper Lake, N. Y., May 16, 1923, Oval Wood Dish Corporation to Boyd Sinclair Lumber Company, 30 Church St., New York City, reading as follows:

DEFENDANTS' EXHIBIT X-12½

"Accept one car three and quarter Factor Beech immediate shipment sixty dollars delivered Boston."

Telegram, dated May 16, 1923, Boyd Sinclair Lumber Company, New York City, to Oval Wood Dish Corporation, Tupper Lake, N. Y., reading as follows:

DEFENDANTS' EXHIBIT X-12¾

[fol. 557] "Have chance secure order 13/16 x 3¼ Factory Beech 60 Boston. Can you accept. Wire."

Letter, dated May 18, 1923, Oval Wood Dish Corporation to Boyd-Sinclair Lumber Co., Inc., 30 Church St., New York City, reading as follows:

DEFENDANTS' EXHIBIT X-13

"GENTLEMEN: Your letter of May 17 in regard to our recent wire to you on Beech Flooring is received.

We note that you have given your New England man our price and wish to advise in connection with this particular stock, namely 3¼ Factory Beech, that we have today sold two cars of this stock at seventy-five cents per M feet more than we quoted you on the Boston rate, and in view of the fact that we have but a little more than once car left, we are asking you should you receive this order, to forward it to us promptly, as this quotation was made subject to prior sale."

Letter from Boyd-Sinclair Lumber Company to Oval Wood Dish Company, reading as follows:

DEFENDANTS' EXHIBIT X-13½

"GENTLEMEN: We thank you very much for your wire and letter confirming price on the Beech Flooring. Perhaps our wire was not quite explicit. We had a wire from our man in New England, in regard to this, stating that he thought he could get an order in competition of the other shippers for \$60.00. We wired him on receipt [fol. 558] of your wire to close the business if possible.

Should we get this, we will wire you order."

Letter, dated June 30, 1922, from Oval Wood Dish Corporation to George H. Storm & Company, 71st to 73rd Sts.; New York, N. Y., reading as follows:

DEFENDANTS' EXHIBIT X-14

"GENTLEMEN: We wired you yesterday as follows which we now confirm:

'Advance prices on two and quarter Clear number one and Factory Maple Flooring five dollars per M. Will accept Lowry order if sent promptly.'

Kindly correct our New York list as above. The other items are unchanged and are subject to our special terms with you.

The demand for 2¼ Maple Flooring is very insistent and we believe that these advances are warranted. We will appreciate it if you will advise us how these prices compare with those of other manufacturers who are selling stock in your territory.

We have your letter of June 27 and are very glad to know that you secured the Lowry order. As stated in our telegram we will accept this order at the old price provided you send it in promptly.

We are in receipt of your telegram for the rush order of 2¼ Flooring and will protect the price on this order and ship immediately. Ordinarily we are not able to secure switching service on Friday but [fol. 559] have succeeded in getting the promise of a car today and will get it out immediately.

Thanking you for this order and with kindest regards, we are."

Telegram from Oval Wood Dish Corporation to George H. Storm & Company, New York City, dated June 29, 1922, reading as follows:

DEFENDANTS' EXHIBIT X-15

"Advance prices on two and quarter Clear number one and factory Maple flooring five dollars per M—Will accept Lowry order if sent promptly."

Letter, dated June 27, 1922, from George H. Storm & Company, New York City, to Oval Wood Dish Company, Tupper Lake, N. Y., reading as follows:

DEFENDANTS' EXHIBIT X-16

"GENTLEMEN: We have been doing a lot of scrapping lately over the big order of Maple Flooring for John Lowry. He has been a good customer of ours for years, and we could not let the order pass. He has offered us the job at the other man's figure, and we

have today agreed to accept it, although it is altogether too low considering the class of work that he expects. He had a combination figure from some wholesaler and some lumping floorlayer here in town, which was what caused all the trouble.

We received your telegram that you could not cut the price, and suppose you are right in your stand, although it did seem that con-[fol. 560] sidering the special conditions surrounding this order, and the fact that you have been so anxious to move your Clear stock, you should have been able to help us a little.

We have submitted samples of your flooring and we want to supply your stock, so that you may expect to receive an order from us very shortly. It will be for about 150,000' for shipment between now and September 1st. We believe this ought to make you feel good."

Letter, dated September 4, 1922, from Oval Wood Dish Corporation to George H. Storm & Co., 71st to 73rd Sts., East River, New York City, reading as follows:

DEFENDANTS' EXHIBIT X-17

"GENTLEMEN: Your letter of August 30, is received and we note what you say about the shipment of the stock to the Burke Bros., Company and we will hold the stock until they notify us that they are ready to receive it.

We regret very much that we did not get the Leavitt order. We know that some members of the association are selling 3¼ at a very low price, but did not suppose that anyone would sell it at \$80.00 f. o. b. Brooklyn."

[fol. 561] Letter, dated August 30, 1922, from George H. Storm & Company, New York, to F. M. Hodges, 7th Avenue and 32nd Sts., New York City, reading as follows:

DEFENDANTS' EXHIBIT X-18

"DEAR MR. HODGES: The order for the Burke Bros. Company cannot be shipped in September as contemplated. The building will not be ready for the stock until the middle of October, so it should come out the fore part of October. Very sorry we could not ship it now.

Leavitt has just telephoned that he has bought a carload of 13/16 x 3¼" No. 1 Maple @ \$80.00 F. Q. B. somebody's warehouse in Brooklyn, so there's a perfectly good order gone to waste. Isn't it too bad the way people cut prices. It certainly is discouraging."

Letter dated June 25, 1923, Oval Wood Dish Corporation to George H. Storm & Company, reading as follows:

DEFENDANTS' EXHIBIT X-18½

"GENTLEMEN: Your letter of June 22nd, is received.

Our Mr. F. M. Hodges is now in New York City and will undoubtedly call on you and give you full information as to our present depleted stock and prices on same."

Letter, dated June 22, 1923, George H. Storm & Company to Oval Wood Dish Corporation, reading as follows:

DEFENDANTS' EXHIBIT X-19

[fol. 562] "GENTLEMEN: Recently the Kalt Lumber Company repeated to the writer that they could buy Clear Maple for less than \$110.00. Yesterday, Mr. W. D. Magovern stated that he could sell us Clear Maple at \$109.00. This morning Mr. Sam E. Barr states that he can sell it at \$108.00 and make money.

Evidently the market has slipped off in Maple, as it has in Oak, and your good firm has not seen fit to reduce your prices. Now, this makes it very bad for us, and does not help us any with our customers. We try to be the first to cut and the first to raise, or, in other words, to be just a little bit ahead of the other fellows; and in this case, we are behind.

Can it be that we did not receive your revised prices? Please let us hear from you at once."

Letter, dated September 24, 1923, Oval Wood Dish Corporation to George H. Storm & Company, reading as follows:

DEFENDANTS' EXHIBIT X-20

"GENTLEMEN: Referring to your letter of September 21, and confirming our conversation by telephone this morning, we can furnish the car of Maple Flooring wanted by the Kalt Lumber Company, as follows:

13/16 x 3¼ No. 1 Maple Flooring, \$89.25.

13/16 x 2¼ No. 1 Maple Flooring, 93.25.

Hoping that you may be able to send us this order, and with kindest regards."

[fol. 563] Letter, dated September 21, 1923, from George H. Storm & Company to Oval Wood Dish Corporation, reading as follows:

DEFENDANTS' EXHIBIT X-21

"GENTLEMEN: The Kalt Lumber Company is in the market for a car of Maple Flooring, containing 10,000' of 13/16 x 3¼" No. 1, balance of car 13/16 x 2¼" No. 1, for immediate shipment.

Kindly wire your very best price Saturday morning. Kalt, as you know, is the closest buyer in New York, and there are lots of cheap Maple prices coming in these days."

(P. S.)—"Have enquiry for 105,000' 13/16 x 3 1/4 Factory f. o. b. Gastonia, N. C. shipments to start Oct. 15. Are offered 56.00. Wire at once, if interested would handle for 2.00 commission."

Letter, dated October 3, 1923, from Oval Wood Dish Corporation to George H. Storm & Company, reading as follows:

DEFENDANTS' EXHIBIT X-22

"GENTLEMEN: Your letter of October 1 is received.

We are practically marking time in the Flooring business for the reason that we do not care to meet some of the ridiculously low prices that are being made by other manufacturers. However, there are some items that we are overstocked on and are willing to reduce to the following prices, delivered New York, subject to your commission.

13/16 x 2" Clear Maple Flooring, \$93.25.

13/16 x 2 1/4 No. 1 " " 93.25.

13/16 x 2 1/4 Clear Beech " 88.25.

[fols. 564 & 565] We would also accept an order for one carload of 13/16 x 2 1/4 Clear Maple Flooring at \$103.25.

The writer will probably be in New York next week, and will call and see you.

With kindest regards."

Letter, dated October 1, 1923, George H. Storm & Company to Oval Wood Dish Corporation, which reads as follows:

DEFENDANTS' EXHIBIT X-23

"GENTLEMEN: The latest price list we have received from you is dated June, 1923. Will you not kindly send us a revised copy?"

Letter, dated October 30, 1923, from George H. Storm & Company to Oval Wood Dish Corporation, which reads as follows:

DEFENDANTS' EXHIBIT X-24

"GENTLEMEN: We enclose herewith our formal order for Clear Maple Flooring, for shipment to Kingston. Please consign this to Edward S. Murphy Company billing us at your 'F. O. B. Mill' price, and we will pay the freight."

[fol. 566] T. M. RALSTON, being duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

I am the Sales Manager for the Indiana Flooring Company of New York with a plant at Reed City, Michigan. We have four machines and our present output is about eleven to twelve million feet a year of maple, beech and birch flooring. We have not manufactured birch yet, but we probably will. The Indiana Flooring Company is not a member of the Maple Flooring Manufacturers Association. It has been engaged in the manufacture of flooring at Reed City since June 4, 1923. The plant at Reed City was formerly owned by William Horner and was purchased from the Grand Rapids Trust Company as Receiver. The Receiver was appointed for William Horner by the Federal Court on January 1, 1922. Before January 1, 1922 I had been connected with the William Horner business for about eleven years. After the appointment of the Receiver I continued to work for the Receiver until May, 1923. The Grand Rapids Trust Company as Receiver for William Horner is a member of the Maple Flooring Manufacturers Association. When the Grand Rapids Trust Company was appointed Receiver for William Horner, I received instructions from the Receiver with respect to my duties. I was not informed or advised that in the sale of flooring I was to maintain any uniform price or any Association prices in view of the fact that the Receiver was a member of the defendant Association. I was not informed that any rules or data contained in any of the freight rate books were to be binding on me or were to be followed by me in the sale of flooring. I don't remember any specific instructions were given to me except to get the highest price possible for the flooring in order to make the [fol. 567] largest possible profit.

The Court: As a matter of fact, Mr. Birdsall was not versed in the manufacture of flooring at all, and he simply took over the agents and officers of William Horner practically as it then existed?

A. Yes, sir. I think I could go further than that and say that for practically all the period I was there, for the first few months at least, Mr. Birdsall did not give any instructions; he simply told me to go ahead and use my own discretion in handling the sale of flooring.

Q. How long did you continue there from January 1, 1922?

A. Until May, 1923. I talked matters over with Mr. Birdsall, of course, at different times.

I never at any time received any instructions from him limiting my discretion so far as following the rules of the Association was concerned, or using any of that data as a basis for making my prices, or as a price list.

I began to work for William Horner some time in the fall of 1910 as Sales Manager and continued in that capacity until the appointment of the Receiver. Horner built a plant at Newberry in 1913 or 1914. As I remember Horner was a member of a Maple

Flooring Manufacturers Association for three or four months in 1915 or 1916. Then we dropped out and joined in the fall of 1919 or some time during 1919 and continued to be a member until the appointment of a Receiver.

"Q. I wish you would state generally what your duties were, I mean how you kept in touch with market conditions and how you performed your duties as a sales agent during those years.

A. We were very large manufacturers of flooring—our output was very large.

[fol. 568] Q. How large?

A. Well, from the period that we built the Newberry plant, after that we were making thirty to thirty-five million feet yearly. It was a very large output. We had no salesmen on the road, and my practice was to have personal representatives in the large centers throughout the country. I made it a point to go and see those representatives at least once or twice a year. In other words, I was on the road perhaps a third of my time during that period, travelling about; not so much selling as just seeing the representatives, keeping in touch with them, keeping in touch with the general conditions. Our flooring to a large extent, I could not say what per cent, was sold by these representatives. We sent them our price list, allowing a commission; in some cases, we invoiced direct to the representatives, who were wholesalers, if their credit rating was satisfactory. The balance of the flooring was sold through personal inquiries that came to Reed City, for which I quoted myself, if I was there; or if not, someone else in my place. I think I am safe in saying eighty per cent of our flooring during that time was sold through representatives in various cities in the country."

We sold flooring all over the United States and exported to England and a little to the continent.

"Q. Did you in making these trips about once a year, that is, covering the entire ground in the United States once a year, become acquainted with conditions in those various markets?

A. Yes, I think I was pretty well acquainted with them, because I kept in close touch.

Q. I wish you would describe what you found with respect to competitive conditions, if any, that existed during that time?

A. I would say that there was always a very strong competition in Maple, Beech and Birch flooring, all kinds of flooring. I have had some little experience in handling other kinds of lumber as well, and I do not believe there is any article in lumber in which there is more competition than in flooring. The prices obtained [fol. 570] have always been very close. As a rule, on inquiries we would receive, we would have to quote against anywhere from ten to twenty or twenty-five different concerns. I have seen innumerable times—I have been in offices of our representatives and in the office of people handling flooring—and I have seen lists of I would say, ten to twenty or twenty-five concerns quoting on the same item, and I have never seen anything but a wide range of price, as high as ten to fifteen dollars a thousand difference between the highest and lowest price. I have seen that all over the country, different places, and

so I would say that at no time have I seen prices running the same to any extent.

Q. That condition which you have briefly described, was that a constant condition or merely sporadic?

A. It was a constant condition.

Q. Does it exist today?

A. Absolutely.

Q. And has existed so long as you have had knowledge on the subject?

A. Yes, sir; as long as I have had connection with it.

Q. How about the Canadian competition? Is that any factor, the Canadian flooring, is that a factor in the American market?

A. It is to a certain extent. In some parts of the United States markets where they can get into on account of favorable freight rates. The Canadian mills manufacture quite a large amount of flooring.

Q. About how many prominent mills are there over there?

A. I cannot say; in guessing, I would say, five or six that get in here.

[fol. 571] Q. Large?

A. Fairly large; one or two quite large. Of course I imagine the larger percentage of their product is sold there, but I do know of many occasions when they would have a surplus stock they would come into the American market and sell at prices lower than they were selling in their own market at the same time.

Q. Have you seen pricelists on both sides of the border?

A. Yes, sir.

Q. They would cut their price, or as economists call it, dump their goods in the United States?

A. I can give you one specific instance that happened in the last year. I was in a town in Canada, and visited a flooring mill there. I was talking to the sales manager of that mill. He showed me his price, the prices at which they were selling at this particular time in Canada, and he told me that those were the prices that were generally being obtained there. I was in Boston within three or four days—in fact, I came back through Boston and I saw prices from Canadian manufacturers that averaged five to eight dollars below what they were selling for over there.

Q. State whether or not the Boston Manufacturers ship a considerable portion of their product to New England and New York?

A. The Canadian?

Q. I mean the Canadian?

A. Yes, I think the eastern market is their principal market. I have known of Canadian flooring coming into Buffalo and Detroit; never farther west than Detroit.

Q. I believe there is a duty on Maple flooring into Canada?

A. Yes, sir.

[fol. 572] Q. Do you recall what it is?

A. Twenty-five percent at the present time.

Q. Twenty-five percent of the value?

A. Yes, sir.

Q. State whether or not there is a duty on Maple flooring coming from Canada into the United States?

A. None.

Q. There is none?

A. No, sir.

Q. This competition that you have spoken of, does that apply among members of the various manufacturing associations, during those years?

A. I didn't get that.

Q. You spoke of the variation in prices, competition among the different manufacturers. Did that group of manufacturers include the members of the Maple Flooring Manufacturers Association?

A. Yes, both members and non-members.

Q. You say there has always been active competition not only among members, not only by members among themselves, but of members against non-members?

A. Absolutely, yes, sir.

Q. How do you explain the existence of that condition, when you consider the fact that during the previous years there was supposed to be in force and effect, at least, the so-called Minimum Price Plan in the Maple Flooring Manufacturers Association?

A. I really don't know, unless, if there was any such agreement, it was not carried out. Whatever I saw of prices that were being quoted, my own opinion would be that the law of supply and demand [fol. 573] for flooring controlled it.

The Court: It must have been one of two things: Either they didn't carry out their bargain, or the prices quoted must have been above the minimum price.

Q. What was your observation as to whether those Minimum Price Plans were observed in the practical conduct of the business?

A. I would say absolutely that they were not.

Q. How do you know that?

A. From prices that I have seen at different times and my own personal knowledge of the prices that other mills were quoting.

Q. You compared the prices that you saw and were able to get, with the minimum prices, so-called, in force at that time?

A. With the prices—

Q. So-called minimum prices. I think in some of the articles they set forth what shall be the minimum price Frame "A." Did everybody get higher than that price, or get that price all along?

A. My judgment would be that there wasn't much attention paid to it. In some cases, the price would be higher and in some cases lower.

Q. Each fellow got the business on such terms as he could?

A. Yes, sir.

Q. That is the way you conducted the sales department of Horner?

A. Absolutely, at all times.

Q. Was it your observation the others compared their business along the same line, the other members?

A. I would judge from the quotations I have seen, and what I know of their business, that they did.

Q. You were getting statistics, were you, that were issued by the [fol. 574] Association?

A. Yes, sir.

Q. Did you ever have occasion to compare the reported sales with the so-called minimum prices which were supposed to be in effect?

A. I don't know as I ever did, because I never paid much attention to the prices that were given in the completed list.

Q. What would you take into consideration when you fixed the price of your flooring? You had to arrive at some price at which you would sell it; how did you arrive at the price, what factors did you take into consideration?

A. Our cost of production based on the cost of the rough lumber, manufacturing costs, selling costs, and a profit.

Q. And the conditions in the respective markets where you wanted to sell?

A. And market conditions very largely.

Q. The amount of inquiries you received, did you take that into consideration?

A. Not so much that as the amount of business on our books, or our wish to move a certain articles, certain size or grade, of maple flooring; all those things entered into it.

Q. Did you feel free to exercise your own independent judgment during all that time, or did you feel constrained by some rule or data that were issued by the Association, or any recommendations of the Market Conditions Committee?

A. I always felt free to make my own prices, and I always did make them.

Q. You always did?

A. Yes.

Q. How did you advise your trade as to what your prices were, [fol. 575] or your representatives, or special agents?

A. We sent out lists on our own stationery, showing the different items and our price f. o. b. cars mill, freight at the bottom, the amount to add for freight in dollars and cents to cover the point which that representative covered.

Q. You made out and distributed your own price lists?

A. Yes.

Q. Did you use any books or data that were issued by any of the associations as price lists?

A. None whatever.

Q. How about the freight; you say you added the freight; how did you add the freight? Did you have a traffic department, or did you use these Rate Books as they were gotten out?

A. We had a traffic man, traffic department and full tariffs to all points in the country at our Reed City mill. We also had a traffic man at Newberry, although he handled more the outbound shipments and inbound shipments and had nothing to do with looking up rates on stock that we were selling. We based our prices en-

tirely on Reed City. Our traffic man there would give me the rates as I needed them. Our Newberry plant—the difference in freight between Newberry and Reed City to points in the East is about an average of about three cents, that is, to eastbound points.

Q. Three cents a hundred?

A. Three cents a hundred pounds.

Q. How much is that a thousand?

A. About sixty cents a thousand. To western points, most of them, the far west especially, the Newberry rate is five cents lower than Reed City. We figured, and always have found it worked [fol. 576] out very well, to base all of our prices on Reed City, and that would practically equalize the rate from both mills. When we took an order for the Pacific Coast, we shipped from Newberry. If we took an order for eastern points, we shipped from Reed City. I believe there were many cases where we shipped from Newberry, although the rate was higher, when the Reed City plant could not supply it.

Q. I take it, you did not sell your flooring F. O. B. Cadillac?

A. We sold F. O. B. Reed City.

The Court: That is twenty-eight miles from Cadillac?

A. Yes, sir.

Q. What is the difference between the rate from Cadillac and Reed City? Is there any difference?

A. No difference—I say, no difference, there may be points where there is a small difference, but practically the same.

Q. I notice from this sheet, "Freight Rates on maple flooring earloads, from seventeen producing points in Michigan and Wisconsin to thirty representative markets in the United States, the average from Cadillac to these places is 44.7, and the average from Reed City is 44.7 per cent, but there is a fraction of a cent's difference to some points.

The Court: They are in the same territory, they are only twenty-eight miles apart."

Before the war our average commission was \$1.50 per M.

At the time of the war a great many commission men and *and* wholesalers claimed their costs of doing business were very much higher and wanted more and we paid them at that time \$2.00. Since then the commission has remained the same. There was not [fol. 577] a fixed commission. We paid all the way from 50¢ to \$2.00 and in a few cases a little more than \$2.00. Lately our prices have been subject to \$2.00 a thousand commission as a rule, although in some cases I quoted net prices. In fact, I would say up to about two or three years ago I quoted net price about half the time and sometimes a price that was subject to a commission. When I quote net prices, it is up to the wholesaler or commission man to add whatever profit he can get. There were cases where the commission man would cut his commission in order to get an order. We have cases where the commission man will get only 50¢ a thousand. I never considered myself bound by any data appear-

ing in the rate books or any so-called official terms of sale with respect to commissions.

When I was with Horner, the terms of sale were 2% 10 days from date of shipment, or 60 days net. I don't know how long *how long* before I went with Horner he had used those terms. They are the usual terms in the lumber business. I know of no Association rule that limited me in any way with respect to what the terms of sale should be. I do not regard those appearing in the freight rate books as binding upon me in any way.

I conducted the business for the Grand Rapids Company as Receiver the same way as I had been conducting it for William Horner. Between January 1, 1922 and May, 1923, when I left the Receiver, Mr. Klesner worked with me. I think he was there from February or March, 1922. He is the present representative of the Receiver.

[fol. 578] "Q. What do you think about the statistics that were furnished from time to time by the secretary of the various maple flooring manufacturers associations?

A. The Statistics, as a rule, are very, very, valuable, especially as regards the production and the stocks on hand and the general information given in these statistics that we received from time to time.

Q. What about the weekly sales report. What features of that did you consider?

A. The principal feature, as I said before, the principal feature I considered of that, is the total shipments. I never felt, couldn't feel, that the prices obtained or shown in that weekly sales report were of much value, and I never considered them; in fact, some weeks I never even bothered to look them over or check them up. The total output of maple flooring, total number of mills represented or manufacturing maple, beech and birch flooring, is very large, much larger than the membership of the Association, so that it lessened their value very materially.

Q. You say the statistics with respect to prices?

A. Yes. In other words, I don't think that an estimate of that kind indicates what market obtained for flooring. They could not do it unless they showed nearer one hundred per cent of the flooring sales made throughout the country.

Q. In other words, there are a large number who are not members? [fol. 579] A. Yes, sir; not only that, but it was very seldom that it showed even the sales of the total membership of the Association.

Q. About what percentage—you say you went the country over, selling Maple flooring for a great many years—about what percentage would you say of the total production of Maple, Beech and Birch is made by the members of the present defendant Association?

A. I am not sure just of the present membership, who they are, but as I know it, as I remember, of the total of the woods made, I wouldn't say over fifty to fifty five per cent is made by members of the Association at the present time.

The Court: About what percentage of the total output in this country of Maple, Beech and Birch flooring did the Horner mills, when running at their fullest capacity produce?

A. Of the total output in the country perhaps fifteen per cent.

The Court: They were the largest producers in the country, were they not?

A. Yes, by far.

Q. There is a list. There is some question about the Wisconsin Land and Lumber Company, which is not a member at the present time, so in making a calculation you can consider that company out.

A. What is it you want?

Q. I just wanted to show you the list of the present Association.

A. What is your question.

[fol. 580] Q. I just wanted to show you the list. You said you were not absolutely certain.

A. I would say this is about right, fifty or fifty-five per cent would be my judgment.

Q. State whether or not in different communities in West Virginia, Tennessee, Michigan, New York, Pennsylvania and other states, Vermont and New England states, there are not many lumber companies who have merely one machine and who are not known to the trade as manufacturers of Maple flooring?

A. I know of several such cases, and there is no question but what there are a lot of saw-mills that have one flooring machine, or perhaps two, making flooring at odd times and do not advertise the fact much at all. They have a mixed grade trade; perhaps they are supplying certain yards throughout the country with different material, different kinds of lumber, and they ship a great deal of their Maple flooring to these yards.

Q. They supply the small communities without shipping to the big markets all over the United States?

A. Not necessarily the small communities; it might go anywhere, that stock.

Q. Is that so?

A. Yes, sir.

Q. Either in L. C. L. or mixed car lots to their regular trade?

A. Yes.

Q. Getting back to that matter of statistics, you say that you did [fol. 581] not consider these statistics so valuable as they might be if they covered one hundred per cent of the dealers?

A. Yes, sir.

Q. Of the manufacturers?

A. Of the manufacturers; yes, sir—statistics as to prices.

Q. Is that correct? Do you limit it merely as to prices, or the entire subject matter?

A. The entire subject matter. There is no question about that; it wasn't nearly as valuable as it might be if you had a hundred per cent.

Q. You say you considered, however, the figures with respect to production as more important than the figures with respect to the prices realized?

A. Yes, sir.

Q. Why was that so?

A. Because your figures of production, your figures of stocks on hand, and figures of that kind could be made to show—or you could tell from those more what the state of the market and of the stocks that the other mills had to offer was. As far as the figures on prices go, your market is pretty near the lowest price at all times. There was nothing in those figures as to prices; there could not be any full report because there were so many outside of the Association selling flooring that your data was necessarily very incomplete.

Q. With respect to prices, you were kept pretty well informed as to prices that you obtained from your representatives and the whole-[fol. 582] salers and other prices from day to day?

A. My information was absolutely, as I thought, accurate, because it was gotten from our personal representatives, and from letters and things that I had seen myself from day to day. In fact, there wasn't a week passed but what I would see quotations from a dozen or more letters.

Q. State whether or not in the conduct of the flooring business, quotations may be made, especially to distant points and the order will not be accepted, or a contract become definitely into existence until maybe a month or two or three weeks after that.

A. That is very often the case. We make a price that goes to, perhaps, a contractor that is just bidding on a job, putting in his figures, and it may be a month, before it is closed. You may say that you will hold that price open for thirty days or such time as he knows he is awarded the contract?

Q. You say that is quite usual?

A. It is so far as we are concerned. I know it has happened a great many times, with us. I can't say as to others.

Q. So if a sale were reported as being made, we will say on December second, it might reflect prices thirty days or six weeks before?

A. Absolutely, in many cases I think it would.

Q. In that respect, the statistics were not so good as they might be?

A. No.

[fol. 583] Q. They did not at all times—that is, at least every sale reported there, did not necessarily reflect the price at the time you received the report, did it?

A. No, there was statistics, as a rule—

Mr. Fowler: I wish to object to the method of examining the witness. It has been an argument a good part of the time. I did not want to raise any objection.

The Court: Of course this witness is your witness, Mr. Darby.

Mr. Darby: I appreciate that and I am sorry the Judge did not speak before. I will try to observe the rule.

Q. State whether or not the fact that you saw some one sale reported at higher prices than what you had been getting, would necessarily in and of itself cause you to immediately raise your prices?

A. No, it would not.

Q. State what other factors you would take into consideration, if any?

A. The principal factor would be the demand and the condition of our stock on the particular item that the inquiry was on. If we wanted orders badly, if we had a lot of orders on the book unfilled, or oversold, naturally we would keep our prices up. If, on the contrary, we have no orders and the stock is piling up in our shed, the prices naturally go down. To a very large extent last year, the need of money governed that a good deal—the last year before the Receivership.

Q. Would you take into consideration the phase of the economic [fol. 584] cycle then existing?

A. We try to, yes, sir.

Q. Whether it is a period of inflation or deflation?

A. Yes, sir.

Q. So far as your own line is concerned?

A. Yes, sir.

Q. State whether or not you take into consideration your own financial needs at that time?

A. At certain times we did very much.

The Court: Those were matters that were of great importance to the Horners?

A. Yes, sir.

Q. You take into consideration, you say, your own stock conditions?

A. Absolutely, yes.

Q. I believe you stated also your own unfilled orders?

A. Yes, sir, absolutely.

Q. How about your stock of rough lumber on hand, or your logging operations?

A. Until the last few years we had very little logging operations; we were buying merely the rough lumber.

Q. Would you in fixing your price take into consideration the stock of rough lumber you had on hand?

A. Especially during the last year or two, yes, because we had to work that lumber up into flooring—when I say the last year or two, I mean the last year or two before the Receivership.

Q. How about the market price of your lumber. Do you give that consideration?

[fol. 585] A. Yes.

Q. How about what you considered the future prices of rough lumber would be?

A. All these things entered into it.

Q. So that the statistics—

Mr. Fowler: Your Honor, if he is to make an argument on that, I will object before hand.

Mr. Darby: I don't think I am.

The Court: As a matter of fact, you entirely misjudged the future trend of rough lumber in 1920?

A. Absolutely.

Q. Notwithstanding the fact that you had these statistics furnished you by the Maple Flooring Manufacturers' Association?

A. Yes, sir.

Q. And the test runs, and etc.

A. Yes, sir.

Q. By the way, what was your opinion of the value of those test runs and the data furnished with respect to average manufacturing costs?

A. They were very valuable to us from a standpoint of keeping our own costs in shape and of knowing how our costs compared with those of the other plants. At Reed City we didn't have any accurate cost; at Newberry we had a very thorough one and we were naturally very interested in knowing what the other manufacturers, it cost them to manufacture their stock, and in that way trying to check up and seeing that we were making them as cheap as possible.

[fol. 586] The Court: Isn't it a fact that a very large factor in your being able to produce at a lower cost than the average cost so to speak at Newberry grew out of the proximity of your mill to the raw material?

A. Yes, that had very much to do with it, no question of that at all. Our freight rates into Newberry on our raw material was very considerably lower than our freight rates to Reed City, that was on the inbound material and at Newberry we had that tract of timber of our own from which we were cutting, and on which our freight was nothing at all, inbound freight, practically.

Cross-examination.

By Mr. Fowler:

Q. You guess that the portion of production by members of the Association to the entire production of the country was about 50%?

A. That is just an opinion, yes, sir.

Q. Of course that is just a mere guess, is it?

A. I have a pretty good idea of what was manufactured I think.

Q. Give us a guess at the ratio of production of the members of the Association who are located in Michigan to the entire production of the Michigan mills.

A. To the entire production of the Michigan mills?

Q. Yes.

A. Might I see that list again? I would have to check up on what mills are in Michigan to make a guess at that and what are located in Wisconsin.

Q. You guessed offhand at the other?

A. That is a very difficult question to answer because I would have to check up and see which mills are in Michigan. I know something of the product of each mill.

[fol. 587] The Court: Of course in answer to that question you will include the Reed City plant which now belongs to the Indiana Flooring Company because at the time this bill was filed that plant did belong to the Horner state?

A. Your question is the percentage that the Michigan mills manufacture to what?

Q. The percentage of the members of the Michigan mills that belonged to the Association, to all the mills that manufacture, by all the mills in Michigan?

A. All the mills in Michigan? That is probably 80%.

Q. Give us a guess as to the members of the Association that are located in Michigan and Wisconsin to the entire production in Michigan and Wisconsin.

A. It would run hardly as much I guess, in my opinion.

Q. How much would you guess?

A. About 75, probably it is a little less because I think that there are more mills in Wisconsin out of the Association than in Michigan, that is my recollection.

Q. Were you ever down south?

A. Some parts, yes, sir.

Q. Did you ever go through the mills down south?

A. Quite a few of them, yes, Nashville, Memphis, Little Rock and places.

Q. Of course you haven't got actual statistics in making that estimate from them at all or anything like that?

A. It is just simply an opinion, that is all.

Q. Did you sign that petition that said that the Association members produced 70%, that petition to the Federal Trade Commission?

A. I don't remember. I may have.

Q. Do you know what that estimate was based on?

[fol. 588] A. No, I don't remember. I don't just remember what it was now.

Q. You said these statistics that you get from the Association you regard as very valuable?

A. In the main, yes.

Q. And you emphasized the "very," as a matter of fact, you repeated it. You regard that as one of the most valuable activities in which the Association engaged, don't you?

A. The statistics?

Q. Yes.

A. Yes, as to costs and production and etc.

Q. Taking statistics as a whole, regardless of prices and production.

A. I said before that there are some features of those statistics that I don't regard of any value at all and never did.

Q. And there are some other features that are more valuable than other features?

A. Absolutely.

Q. And of course those statistics are valuable in that they aid you in getting more money for your lumber?

A. For our flooring?

Q. More money for your flooring?

A. Some cases and some cases the opposite.

Q. If it didn't aid you in getting more money for your flooring they wouldn't be of any value, would they?

A. There is something in that, true.

Q. Isn't that absolutely true?

A. Not always.

Q. Not every little incident of course, taking it as a whole, if they didn't aid you in getting on an average more money for your lumber you wouldn't want it at all, would you?

[fol. 589] A. I presume that is true, yes.

Q. You were on the Market Conditions Committee, weren't you?

A. Yes, our firm was a member of that Committee.

Q. How long did you function on that Committee?

A. I think a year to a year and a half perhaps, I am not sure.

Q. What were your duties in connection with that Committee, I mean what were the duties of the Committee?

A. The Committee simply gathered information as to the costs of manufacture, test runs, the average of the test runs and general information on the markets and on conditions for the benefit of the members of the Association.

Q. And then made your report to the Association?

A. There was no report made of any kind to amount to anything, generally just simply the Market Conditions Committee talked in the general meeting of what they had found.

Q. That is, you discussed in the open meeting of the Association:

A. Discussed what?

Q. Your report?

A. The report? Yes, absolutely. That was talked over, certainly.

Q. As a matter of fact that is one of the principal things that was discussed in those meetings, was it not, the general market conditions?

A. The general market conditions were always discussed, yes.

Q. And the range of prices?

A. Sometimes.

[fol. 590] Q. Wasn't that one of the things that was generally discussed, range of prices?

A. Not always, no.

Q. Didn't you consider where the prices were, going down or going up or had been going down or going up?

A. There was probably some talk of that, more or less, yes.

Q. That was the interesting thing, wasn't it, whether prices were going down or up?

A. Absolutely it is to any manufacturer, it might be.

Q. When you were talking about general market conditions, it was with reference to whether it would justify prices going up or whether it would necessitate their going down?

A. Not necessarily, it was merely the talk from that Committee was merely on general conditions and on the general state of the market.

Q. Wasn't the ultimate thing you had in mind whether or not the price should be advanced or whether you would have to lower the price?

A. That may be true, I couldn't say what was in their minds.

Q. Really, wasn't that true that that is what you were driving at all the time?

A. There is no question at all if I went to one of those meetings, I went there to get information if I could as to market conditions and the reason I wanted that information was to know what I would do with my prices, yes.

Q. That was the ultimate object you had in mind all the time?

A. Absolutely.

Q. That is what you wanted all of this information for?

A. Why, it would be useless to us for any other purposes.

Q. And that is the reason all of you exchanged all this information about yourselves, was it?

A. Yes, it was spoken of that way.

[fol. 591] Q. You said something about there being as much competition or more competition I believe in maple flooring than any other branch of the lumber business. Do you know of any branch of the lumber business that is not organized into an Association?

A. I don't know anything about the other branches. I know that there are other Associations.

Q. Don't you manufacture raw lumber?

A. Some.

Q. For sale?

A. Yes, sir.

Redirect examination.

By Mr. Darby:

Q. That discussion as to future conditions and to the prices of flooring, that took place at what time, did you say?

A. As to what?

Q. State whether or not that took place in the Market Conditions Committee or in the Association meetings and at what years that took place.

A. I don't quite understand.

Q. Judge Fowler examined you with respect to the Market Conditions Committee and to discussions that were had. What time now was it that you last served on the market conditions Committee?

A. I really couldn't say, it would be I would say a year and a half or two years ago anyway. A year and a half or two years ago, I really couldn't say as to the exact date.

Mr. Fowler: That is when you were on the Committee?

A. Yes, I don't know the dates.

Q. That was when you were on the Committee, the Market Conditions Committee?

A. Yes.

[fol. 592] Q. State whether or not you ever served on the Cost Survey Committee of the present Association?

A. No, I never did.

Q. Has the present Association ever had any market conditions Committee?

A. Not that I know of, I don't know.

Q. Did you attend Association meetings say after the organization of the present defendant Association in March or April 1922?

A. 1922?

Q. Yes.

A. Yes.

Q. Just when did you cease to attend the meetings? That was in July of this year or last year?

A. No, it would be about May of this year.

Q. Were you acquainted with the conditions surrounding the organization of the present defendant Association?

A. Yes, to some extent.

Q. State whether or not you knew of the opinion rendered by Mr. Newman when the Memphis case decision came out in the District Court in 1920.

A. Yes, sir.

Q. Did you receive any opinions—did you know of any given by counsel for the Association just prior to the organization of the Association, the present defendant Association.

A. Yes, at some time there was an opinion given, I couldn't give the date now though just when it was.

“Q. I wish you would state generally what was discussed or what had been discussed at the Association meetings say from March 1922 until you left.

A. The discussion was the cost of production, market conditions to some extent, advertising, the Association put on a very elaborate advertising campaign a year or so ago, and general conditions of the [fol. 593] lumber industry and the flooring industry. I think that was practically the—

Q. About how long did those sessions last, how long did you use to stay at the Association meetings?

A. Sometimes only in the morning. Occasionally I stayed for lunch, sometimes I was there awhile in the afternoon. Sometimes I got in trouble, was called down for leaving, I was accused of going out to get business and let the Association run itself.

Q. State whether or not at the Association meetings since its organization in 1922 they discussed at those meetings the future prices of maple, beech or birch flooring.

A. No, not at all.

Q. Were you ever present when there was any understanding or agreement, either express or implied, as to what the future prices of maple, beech or birch flooring should be?

A. Absolutely none.

Recross-examination.

By Mr. Fowler:

Q. You discussed past prices?

A. Past prices, yes, and general market conditions.

[fol. 594] Q. Did you stop right at the minute you were talking or did you stop an hour or two beforehand?

A. I really couldn't say where the stop was. The talk as a rule was all general.

Q. Just discussed the prices until you got up to the present and then you quit, is that it?

A. I didn't say that, I just simply said I really couldn't say.

Mr. Fowler: That is all.

Mr. Darby: That is all."

F. C. KLESNER, being duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

I am with the Grand Rapids Trust Company, Receiver for William Horner, and have been in the employ of the Receiver since March, 1922. I have charge of the sale of flooring. The present mill of the Grand Rapids Trust Company, Receiver is at Newberry, Michigan. Before the sale of the Reed City Plant, I worked with Mr. Ralston in the sale of flooring there for a while. He was there in the capacity of salesman under my direction as representative of the Receiver. Since Mr. Ralston severed his connection with the Receiver, I have had exclusive charge of the sale of flooring under the direction of the Receiver.

We send in test runs occasionally, I think quarterly, and I remember one that we sent in showed that our manufacturing cost was in the neighborhood of \$34.00 a thousand. At a meeting in Chicago Mr. Kechn told me that our costs were too high and that he could not use it because it would throw the average costs too far out of line with the costs of other manufacturers. He said that he [fol. 595] couldn't use our manufacturing costs in arriving at the average costs. Our costs were high because during the past year considerable claims were allowed against William Horner and we have eventually to pay interest on these claims, which are large. We set up a reserve for interest as well as for the receivership expenses, attorneys' fees, and all that extra expense added to our manufacturing costs resulted in our cost being higher. If it were not for such expense, our costs probably would not be higher than the costs of some of our competitors. It was the overhead expense of the receivership which brought our cost up. The claims against the estate are quite large.

Q. State whether or not you heard Mr. Ralston testify as to the statistical information given the members by the Secretary of the Association—were you in the Court room?

A. I was, yes, some of it I didn't hear, I couldn't hear him very distinctly.

Q. Did you hear him discuss or give his opinion as to the value of the statistical information?

A. Yes, sir.

Q. It might be shorter for you to point out wherein you differ from Mr. Ralston, if you do?

A. Well, we personally don't pay a great deal of attention to the data we receive any more than the amount of orders that are booked and also the stocks on hand, and as far as the average price, we pay very little attention to that; in fact I don't know as I have consulted it very often and personally I think that the Association, especially in their advertising is very strong, for the average concern couldn't make the expenditures that we, as a class can and for the past several months have been putting on extensive campaign advertising maple, beech and birch flooring, which we couldn't do individually. Another thing is, particularly as I see it, on the grade, when we invariably receive an order or quotation, we specify and our customers specify to be in accordance with the rules of the Maple Flooring Manufacturers Association, which of course every one is familiar with. Another thing is on disputes. I might say that just recently we had a car of flooring, order for a car and it was for a specific face flooring, they have been after us to make consignment and we didn't have the stock on hand, so took it up with our superintendent, Mr. Curtis and asked if it wouldn't be advisable inasmuch as we had some clear grade, to ship that on the order of No. 1. We did, we shipped something like 13,000 feet of Clear giving price of No. 1. One car was received. I even wrote them and told them what we had done, figured we were doing them a courtesy, instead of that the car received at destination, they refused the car. Immediately we wired the Association to send chief inspector to this particular place to go over contents.

Q. Where was this shipped to?

A. I was in Wisconsin, and the report came back that the quality of the flooring was exceptionally good, in fact better than the grade, but it was due to the fact that a little—well, take for instance in running the narrow flooring sometimes they might not be particular in sorting out strips that are wide enough so that the tongue would be probably on the end, but possibly six inches, maybe less, where the tongue would be sort of square, in other words, wouldn't be a full tongue. The rules really give leeway for that, for the reason [fol. 597] that no matter who the grader is invariably he might put a piece of the factory into the clear or vice versa. So they allow 5% if I remember correctly, on the rules for just such defects as that. Well, that really saved us, we paid the expenses of the chief inspector over there. They come back and said that they would settle in full otherwise we would have been to considerable expense and probably couldn't have gotten some settlement. They were familiar with the fact that the inspectors are versed in the grade. We think that that is a great thing.

Q. A good thing for the shipper and the purchaser too?

A. Yes, we do.

The Court: That ought to teach you not to send too good grades.

A. You are right, Judge.

We think the field representative work of Mr. Robertson is very valuable.

Never to my recollection was I given any instructions by the Grand Rapids Trust Company that I was to maintain Association prices or observe any uniformity of price. I was not instructed that I should use the data furnished by the Association as the basis for fixing our prices. We simply went along the same as Horner had been doing before. Mr. Horner is still with us and we confer and determine our prices by the general conditions and the stocks we have on hand. We manufacture about 50,000 feet a day and if we accumulate stock in the warehouse so that they are full, we have simply got to get rid of it. We couldn't shut down and disorganize our crew so we simply get out and sell the flooring.

[fol. 598] In the conduct of the business we have exercised our own discretion in the making of our prices. We are governed to a great extent by our representatives. They write in and say that they can procure an order for a certain amount of a certain commodity at certain prices. We either have to accept that or turn it down. That is a common occurrence.

Q. You have stated generally what you did. You may state in answer to this question, just I wish you would make a brief resumé of what factors you have taken into consideration in determining at what prices you should sell.

A. Well first usually is whether we are "long" on a certain face flooring or not and if we are "long" on it naturally we will reduce our price, and if we are short on it probably won't reduce it so much as we do some other commodity. Another by our representative, they write very frequently and say our competitors are quoting such and such a price below our price list and what will we do, will you allow us a leeway and in some instances we do tell them to, we will say for instance, allow them two dollars leeway, to use their judgment as to whether they place the order at the list price or below the list price.

From my knowledge of the flooring business, I will state that competition exists among the members of the defendant Association. We come into competition also with non-member manufacturers. We ship practically all over, north, south, east and west. [fol. 599] I know of no understanding or agreement among the members of the Association that flooring shall be sold on an f.o.b. Cadillac basis or that freight shall be charged from Cadillac regardless of the point from which the flooring is shipped.

The matter of spreads depends largely upon demand and stock conditions. For instance, one manufacturer might be very long on No. 1 and we might be short of it. Hence the price will vary. Stock conditions are constantly changing. The mere fact that I saw that some other manufacturer was getting a higher price than I had been getting in and of itself would not cause me to raise my prices.

Q. Would you or would you not take other factors into consideration besides that one factor that someone else had received a higher price?

A. No, wouldn't consider it at all because that would be entirely as to how our stock conditions were and how the market conditions were.

The Court: Suppose you were carrying the average stock that you do carry of the different grades, upon the receipt of a report from the Secretary of the Association, you discovered that other members, all other members of the Association, were getting higher prices than you were, what would you do?

A. Well, if we had the stock, was long on the stock we would naturally reduce our price irrespective of the other fellow.

The Court: Even though you were getting the lowest price of any member of the Association who reported?

A. Well that is—I don't quite get your connection there.
[fol. 600] The Court: Perhaps you don't. Let me put it in this way: Suppose that you had your average stock on hand of the different grades and upon receiving your report from the Secretary of the Association you discovered that all other members of the Association were getting a larger price, a higher price than you were receiving, would you not immediately raise your price to some extent?

Mr. Darby: Just a moment, if I may note an objection to the question. With all due deference to your Honor, it seems to me that the assumption that there would be an average stock is not true to the facts. For instance, an average stock of what grade, an average stock of what face, an average stock of what thickness, and if, for instance, he were carrying a large stock or an average stock in other grades or other thicknesses or other faces, that wouldn't have any effect whatsoever on the low stock of other grades or thicknesses that he might have, or an unusually large stock of the particular grade or face or thickness for which other manufacturers were receiving larger prices.

The Court: If counsel has sufficiently educated the witness, I will withdraw the question.

Mr. Darby: Such was not my intention. I merely didn't want—it seemed to me that it might be misleading.

The Court: Proceed.

Mr. Darby: I think that is all.

Mr. Johnston: May I ask just one question: When you received statistical information with reference to prices and take that into account in the determination of your prices—determination to change your price, do you take that into account both ways, that is to say, that on some instances do you take into account the statistics of [fol. 601] prices showing a higher trend of prices in raising your prices?

A. No, sir.

Q. Do you take those statistics into account?

A. Scarcely none, no, sir.

Q. You give very little attention to them?

A. Very little.

Q. Or do you give such attention to the lower prices quoted by your competitors, other members of the Association, as to the higher prices.

A. No, I think I might say this that you take for instance if the

price—we will say we might be lower than our competitor, naturally every day we make a good many quotations. Now if the orders were coming in, naturally we know we are a little lower and we also know by our representatives, they advise us both ways. On the other hand, if we are not getting the business and only getting an occasional order we know we are way out of line, if we are long on a certain commodity we have to move it and we do.

Q. Suppose the statistics that you receive from the Secretary of the Association show that your prices are out of line in that they are considerably higher than the average price being charged for a given size and grade of maple flooring, the average price by the other members of the Association, would that have a tendency to cause you to lower your price, the other conditions being equal?

A. No, sir, I don't think so.

Q. Do you give any more attention to the higher prices charged as reflected in the statistics and the higher prices charged by other members of the Association than you do to the lower?

A. Well, no, I can't quite get your connection there.

[fol. 602] Q. I am trying to find out this, whether or not the effect of your examination of these statistics so far as it has any effect upon your setting of a future price, is not to lower your prices as often as it is to raise your prices?

A. I say we pay very little attention—personally I pay no attention at all practically, in fact, we receive some and never look at it at all because I have too much to look after. We base our price just as I say, on the market conditions and whether we are long on a certain commodity, that is what really governs our price.

Recross-examination.

By Mr. Fowler:

Q. You are sales manager of Horner Company?

A. Well, particularly in connection with Mr. Sam Horner. In other words, I am manager—assistant manager to the Grand Rapids Trust Company.

Q. And you mean to say that you don't give any attention to information of that kind that you get in fixing prices?

A. Not necessarily, no, sir.

Q. I am not talking about necessarily. Do you mean to tell me you don't give any attention to it in fixing prices, are you running a thing like that?

A. Well sir, yes, sir.

Q. How long have you been running it?

A. Well I have been there since January 1st, 1922.

Q. Now take Clear, suppose you have got a reasonable stock of Clear maple-flooring you are selling at 95, suppose that you get a report from the Secretary that shows all the others are selling at ninety, of course if you can continue to sell at 95, you do so, don't you?

[fol. 603] A. Yes, sir, but here is a point, if we are long—

Q. Tell me the point, you said, here is the point.

A. Well, if as you say all of them are getting 95, if I was short on that stock, naturally I would raise my price.

Q. I was going to come to that next.

A. But if I am long on it——

Q. If you were selling at 90 and they were selling at 95 and you got the information through that report of the fact that they were selling at 95, you would go up to 95 at once, wouldn't you, or you will go at least to 94?

A. Well possibly.

Q. Well, wouldn't you do it, isn't that common sense?

A. Yes, that is common sense.

Q. Why of course, and that is the way you run your business, isn't it?

A. I will tell you, as I say, we pay very little attention to the report, we are simply governed by the market conditions, the price for lumber, the cost of manufacture, we try to get as near that price as we can, but if we can't get our price and we have to meet legitimate competition, naturally we do it if we need the business.

Q. When you speak of market conditions the price is a part of the market condition?

A. Yes, sir.

Q. And the price revealed in those statistics is a part of the market conditions, isn't it?

A. Yes, sir.

Q. And the stock on hand is a part of the market conditions—that is true, isn't it?

A. Yes, sir.

Q. That is, the stock that belongs to everybody else and the stock that you have got is a part of your market conditions?

A. Yes, sir.

[fol. 604] Q. And you are controlled by all of those things; as a matter of fact, you are controlled by the stock on hand and the price at which the flooring is moved—that is the fact, isn't it?

A. That is the fact.

Q. And all those things are revealed by those statistics, aren't they?

A. Yes, sir.

Q. You were engaged in the lumber business before you went with Horner?

A. Yes, sir.

WILLIAM H. GREENE, being first duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

The correspondence which you hand me and which has been marked Defendant's Exhibits W, W1 to W25, was taken from our files and was either received by us or sent out in the ordinary course

of business. The name of my plant is the West Michigan Flooring Company of Manistee, Michigan. I have been in business there since 1907. We do not own any stumpage and have never owned any. We buy all our rough lumber in the open market.

The West Michigan Flooring Company is a copartnership composed of Edward Bolmer, Mrs. Mary Bolmer and me. We manufacture from $4\frac{1}{2}$ to 5 million feet per year. We have three machines. We joined the Association in existence in 1910. I prepared a statement for Mr. Keehn of the prices paid by us for rough lumber from [fol. 605] 1912 or 1913 to 1922 or 1923. The figures contained in said statement are true and correct. They were taken from our records and represent actual business transactions.

The lumber that we manufacture into flooring is not obtained locally at the present time. We did obtain it locally three or four years ago. However, we now buy the greater part of our product in Wisconsin and Upper Michigan. It comes to Manistee by both rail and water. I don't recall that we have ever made any purchase of rough lumber from manufacturers who are members of the Maple Flooring Manufacturers Association. There is no particular reason for this. We have been able to pick up desirable stocks in other localities where the freight rates perhaps have been more advantageous. We buy from the Louis Sands Salt and Lumber Company of Manistee about a million feet a year. We buy some stocks from the Crocker-Chair Company of Antigo, Wisconsin, the Oconto Company at Oconto, some from the Tippler Lumber Company at Tippler, Wisconsin, the G. W. Jones Lumber Company at Appleton, Wisconsin, J. O. Nessen Lumber Company at Chicago and from others in the Copper Range in the upper peninsula.

Defendant's Exhibit W is a letter of January 29, 1920 from the Adams & Kelly Company to the West Michigan Flooring Company wherein they ask us to keep them advised as to market conditions on maple flooring. The answer of the West Michigan Flooring Company is dated February 4, 1920 and is as follows:

"In response to your letter of January 29th, in which you ask if we would keep you advised from time to time just what the market on maple flooring is.

We really are not in position at this time to give you any intelligent [fol. 606] information on this subject as there seems to be a wide variation in prices being quoted by various mills, but just as soon as we have any information along this line that we think will be of value to you we shall be pleased to advise you."

Letter from A. W. Willis, Wholesale Lumber and Manufacturers' Agent, Milwaukee, Wis., January 5, 1922, addressed to the West Michigan Flooring Company:

DEFENDANTS' EXHIBIT W-1

"In answer to yours of the 22nd Dec.

I find that my customer lost out on the $1\frac{1}{2}$ " face clear maple flooring. The Schroeder Lumber Co. beat him out. He was not

able to get the price at which it was sold at. But as the Schroeder people had the lumber bill they had the inside show at it.

I hope we have not lost our foothold here, but as I wrote you several times our prices were always too high, from \$3. to \$5., and you know this town is a cheap town always, but what you say about during the time of big prices did not seem to count with some who should not have forgotten the times.

I did not like to keep asking you for lower prices as you might think I was made of the same stuff, but I did not sell a foot that did not come from you and propose to stand or fall with you and will keep you posted as well as I can. I don't think there will be any trade for two or three weeks, but I am quoting your prices most every day and will continue doing so."

Letter from the same person, date March 29, 1922, addressed to the West Michigan Flooring Company:

DEFENDANTS' EXHIBIT W-1½

[fol. 607] "Herewith please find my order #3103, 5 M ft. 3 x 8" x 1½" face clear maple flooring, shipment to Devere & Schloegel Lumber Co., this City. Please ship this soon as possible. We understand the boats are now running up to your City so you will not have to ship by rail. Doubtless you know of this. They have not ordered any flooring by carload as yet, are still getting it from Beck at \$90.00 and \$65.00 in any small lots and delivered on the job and think this the cheaper way of doing.

I find that it is the Wis. Land and Lumber Co. that is making the low price on maple flooring, \$88.50 for Clear and \$21.50 Factory. As I get other prices will give you the names.

Weather is bad here and building is slow."

Here is a telegram, August 6, 1923, telegram from Strable Hardwood Company at Oakland, California, addressed to the West Michigan Flooring Company, Manistee, Michigan:

DEFENDANTS' EXHIBIT W-2½

"Quote delivered F. O. B. Sacramento forty thousand feet one by three also one by four number one maple flooring tongue and grooved for delivery sixty days competition unusually keen some firms shading prices Rush wire protecting quotation up to and including August fifteenth."

DEFENDANTS' EXHIBIT W-2

Answer, Telegram dated August 7th, 1923, addressed to Strable Hardwood Co., by the West Michigan Flooring Company:

"Your wire sixth meet legitimate competition other reliable manufacturers."

[fol. 608] The foregoing letters are typical instances of conditions that existed right along before the beginning of this suit. The Strable Hardwood Company of Oakland, California are wholesalers and retailers. They represent us exclusively in California. I do not know whether Mr. Strable of the Strable Lumber & Salt Company of Saginaw, Michigan is a member of the Oakland, California concern. I believe he was at one time and may now be financially interested in the Oakland Company. Mr. Strable of the Strable Lumber & Salt Company is a member of this Association.

Mr. Darby: Telegram from the Strable Hardwood Company, dated January 17, 1922, to West Michigan Flooring Company, Manistee, Mich.:

DEFENDANTS' EXHIBIT W-3

'Have new price list from J. W. Wells reducing all prices Wire present prices all grades manufactured by you advising if you will protect for one hundred twenty days also if you will accept business on the prices for May and June delivery. Rush reply.'

Telegram of January 18, 1922, from the West Michigan Flooring Company, addressed to Strable Hardwood Company, Oakland, Calif.:

DEFENDANTS' EXHIBIT W-3½

'Your night letter seventeenth effective January thirtieth freight rate this territory to Pacific Coast minimum sixty thousand will be reduced to eighty five cents enabling price reduction five dollars and half on one by three and corresponding reductions other sizes from list fifty five. Our letter sixteenth covers this subject. Will accept orders this basis shipment within ninety days.'

List 55 mentioned in the foregoing telegram referred to our own Company's price lists, which we issue from time to time and number [fol. 609] so that they may be conveniently identified in correspondence and telegrams. When the new freight rate reduction went into force and we were advised that Wells had put out new prices, we also reduced our prices.

"Mr. Darby: Telegram of March 9, 1923, addressed to the West Michigan Flooring Company from the Strable Hardwood Company, Oakland:

DEFENDANTS' EXHIBIT W-4

'We are quoting today straight carload one by three factory at sixty seven f. o. b. Madera sixty to ninety days' delivery. Will you accept order if we secure business need ten days' protection.'

Telegram of March 10, 1923, addressed to Strable Hardwood Company, Oakland, by the West Michigan Flooring Co.:

DEFENDANTS' EXHIBIT W-4½

'Your wire ninth will protect quotation to quarter factory ten days shipment in ninety days.'

Telegram of June 2, from Philadelphia, Pa., addressed to the West Michigan Flooring Company, from Lawton Flooring and Shingle Company, reading as follows:

DEFENDANTS' EXHIBIT W-5

'Referring to our wire today We find one of the large maple flooring manufacturers has made a reduction of five dollars per thousand on both no one and clear from your list.'

Telegram from the West Michigan Flooring Company dated June 4, 1923, to the Lawton Flooring and Shingle Company, Philadelphia, reading:

DEFENDANTS' EXHIBIT W-5½

'If necessary to meet legitimate competition will authorize five dollar reduction number one and clear two and quarter inch.'

Telegram from Strable Hardwood Co., addressed to the West Michigan Flooring Co., reading:

DEFENDANTS' EXHIBIT W-6

[fol. 610] 'An order will be placed here tomorrow for thirty one thousand feet one by three clear grade at one hundred seventeen delivered for immediate shipment. Will you accept this business at above price quoted to the purchaser by one of our competitors. Wire answer before ten A. M. July 14th.'

The date of that telegram is July 13, 1923.

Confirmation of telegram addressed to the Strable Hardwood Company, Oakland Calif., sent by the West Michigan Flooring Company, reading:

DEFENDANTS' EXHIBIT W-6 $\frac{1}{2}$

'Will accept order car one by three clear price your wire thirteenth.' "

[fol. 611] "Letter from West Michigan Flooring Company to Sam E. Barr, 50 Church Street, New York City, dated November 2, 1920:

DEFENDANTS' EXHIBIT W-7 $\frac{3}{4}$

'We regret to advise you of our inability to quote you on the items of maple flooring to which you refer in your inquiry of October 28th as we have neither the two inch or two and a quarter inch clear nor two and a quarter inch number one in stock in carload quantities and our flooring plant is still closed down due to the recent loss of our power plant by fire.

'On October 11th, we wrote you at length in response to your letter of October 8th in which we sent you a list of our offerings in maple flooring together with our ideas of prices. We were expecting to hear from you in reply to that letter with an expression as to what you thought of our ideas of the values of maple flooring. Conditions of course are very much unsettled with but little demand and we presume a great variation in the prices on this product as quoted by the various manufacturers. It was our idea in asking for an expression from you as to values, that we might be able to get together whenever a live opportunity presented itself for such sizes that we could actually furnish. Being closed down as we are now with some stock on hand which we desire to move, we trust you will keep us in mind and if any business comes up for immediate shipment on which there is real competition, we trust you will not hesitate to give us a line on the sort of a price that will secure the business and which we will be very glad to consider.'

[fol. 612] "Letter of November 4, 1920, from Sam E. Barr, 50 Church St., New York, addressed to the West Michigan Flooring Company:

DEFENDANTS' EXHIBIT W-7

'Your letter of the 2nd received and in reply wish to say that prices on maple flooring are lower than they have been for a long time. This situation no doubt you know about, and I can't find where two manufacturers are quoting the same prices on any one item. I have

prices on 13/16 x 2 1/4" number one as low as \$125.00, and as high as \$145.00; factory as low as \$75 and as high as \$90, clear as low as \$140.00 and as high as \$148.00. There seems to be quite a surplus of maple flooring among the different manufacturers, but conditions are such at the present time, that no flooring or lumber is wanted, and very few jobs are being figured on that will require flooring during the next three or four months.

When you start running again trust you will keep me in mind when you have flooring for sale, and if I have an opportunity to figure on what stock you have at the present time, will be very glad to take the matter up with you.'

Letter of November 11, 1920, addressed to Sam E. Barr, 50 Church St., New York City from the West Michigan Flooring Company:

DEFENDANTS' EXHIBIT W-7 1/2

'We wish to thank you kindly for the information contained in your letter of Nov. 4th, a reply to ours of the 2nd, inst., with reference to maple flooring. We shall be very glad to have you keep us in mind on what flooring items we now have for sale and if opportunities present themselves, will you kindly take the matter up with us and suggest to us what in your opinion should be the right price on anything which you can use and which we may have to offer.'

[fol. 613] Letter dated August 20, 1920, from Sam E. Barr, Wholesale Lumber, 50 Church Street, New York City, to West Michigan Flooring Company, Manistee, Michigan, readings as follows:

DEFENDANTS' EXHIBIT W-7 EXTRA

"GENTLEMEN: Please quote me by wire immediately on receipt of this letter delivered Boston, Rate for immediate shipment:

48,000 Ft. 13/16 x 2 1/4 Factory Maple Flooring.

10,000 " 13/16 x 2 1/4 #1 do.

We are going to secure this business and I will have it to place tomorrow, and it will take a low price to get it, as we had to meet some very keen competition.

Awaiting your wire quotations, remain"

Letter dated August 23, 1920, West Michigan Flooring Company to Sam E. Barr, New York City, reading as follows:

DEFENDANTS' EXHIBIT W-7 1/2 EXTRA

"DEAR SIR: We will be unable to quote you on the Maple Flooring for which you make inquiry in your letter of August 20th as we haven't in stock the 48,000 ft. 13/16" x 2 1/4" face Factory.

We were unfortunate in losing our power plant by fire on July 21st which has put our flooring Factory out of commission for a time at least. Our warehouses were not destroyed and we have some items of Maple Flooring available for sale and prompt shipment as per the enclosed stock list, and if you are interested in any of these sizes, we shall be pleased to quote you."

[fol. 614] Letter from Sam E. Barr, New York City, to West Michigan Flooring Company, Manistee, Michigan, dated June 12, 1920, reading as follows:

DEFENDANTS' EXHIBIT W-8

"GENTLEMEN: I have your letter of the 10th advising that you have about 120,000' 13/16 x 2 1/4" Factory Maple Flooring on which you can quote me price of \$157.25 delivered New York City, less \$1.50 per thousand commission.

At the present time I have no inquiries or orders that I could apply this stock on, but I will keep your letter before me and if I have an opportunity to quote on some of it will be very glad to use your price.

My Maple Flooring inquiries have dropped off 75% in the last month, and I would like to know what you think of general business conditions, and if you anticipate lower prices. I notice that building and general business in the Central West is practically at a standstill.

Trusting to hear from you at your earliest convenience, I am."

Letter from West Michigan Flooring Company to Sam E. Barr, dated June 15, 1920, reading as follows:

DEFENDANTS' EXHIBIT W-8 1/2

"DEAR SIR: We have your letter of June 12th in which you acknowledge ours of the 10th inst. in which we quoted you on 12/16" x 3 1/4" Factory Maple Flooring. You refer in your letter to our quotation on 120,000 ft. 2 1/4" Factory and we direct your attention to the [fol. 615] fact that we quoted you on 3 1/4" and not on 2 1/4".

We note your remarks to the effect that your inquiries for Maple Flooring have dropped off fully 75% in the last month. We have felt some effects in the slowing up of Maple Flooring business during the past four or five weeks especially in the eastern market, but we think this is due largely to transportation conditions which of course are in a terrible state at the present time. We hear a great deal of talk about lower prices especially from Eastern buyers but we do not anticipate anything serious in this direction. We have had some cancellations from the east but our western connections, that is in territory west of Chicago, are feeling differently about conditions and they are paying the prices and taking in stock about as fast as they can get it. We of course have not been embargoed at any time against shipping west.

The northern hardwood lumber manufacturers seem to be holding their prices right up and of course after all the prices on Maple Flooring are governed by the prices on Maple lumber. There seems to be a scarcity of northern hardwood and while there perhaps hasn't been as much business booked by the manufacturers during the past 30 days as there was prior to that date, the fact still remains that most of the mills are still in an oversold condition and many of them have orders on their books now that will keep their plants running to capacity for some time to come. This refers to Maple Flooring [fol. 616] manufacturers. So taking all these things into consideration we can see no indication of prices dropping to any extent. Yours truly."

Letter dated February 6, 1920, From the George N. Comfort Lumber Company, Cleveland, Ohio, to The West Michigan Flooring Company, Manistee, Mich., reading as follows:

DEFENDANTS' EXHIBIT W-9

"GENTLEMEN: Your letter of February 3rd in reference to Maple Flooring is received.

This letter will be your authority to reserve for us such portion of your product as we are entitled to under the proposition outlined in your letter. We, naturally, would like to know by return mail about how much this will be as there is a limit to what we would want to consider.

It is understood that this business will be booked and a price attached to conform with the market price at the time shipment is made. We would not, however, wish to place this business unless shipment would be made within ninety days from date."

Letter dated February 9, 1920, from West Michigan Flooring Company to The George N. Comfort Lumber Company, which reads as follows:

DEFENDANTS' EXHIBIT W-9½

"GENTLEMEN: In answer to your letter of Feb. 6th with reference to Maple Flooring and in which you advise that you would not want to place any business with us along the lines suggested in our letter of February 3rd unless shipment could be made within ninety days from date.

[fol. 617] It would be absolutely impossible for us to furnish you anything in 2¼" flooring for shipment in ninety days, in fact the only thing that we could take on now for shipment within that time and which could be loaded as near as we can estimate within three to five weeks, would be one car each 13/16" x 3¼" face Clear, No. 1 and Factory. So for shipment within the ninety day period it is the very best that we can offer you and if you are interested we shall

be pleased to handle your order for these three cars of 3 $\frac{1}{4}$ " to be shipped as soon as we can furnish the stock within sixty days, and to be invoiced at the price in effect on our "Acme" Brand Maple Flooring at time of shipment.

We will admit that we do not altogether like this method of doing business and we have already notified all of our customers that we are not going to take on any more business in Maple Flooring until our unfilled orders are reduced to a considerable extent as we figure that we are already carrying too many unfilled orders for the size and capacity of our plant.

In accepting this business to be invoiced at the market price, please understand that we would not accept this mill or that mill's quotation as a basis of price. We will expect to invoice to you at the actual prices that we might be able to obtain for our stock at time of shipment or at the same price at which we might have made the last sale prior to shipping to you. It will be our idea that as soon as the flooring is about ready for shipment, to notify you in advance as to what price we propose to invoice at before shipping and if for any reason you are not satisfied with the [fol. 618] price, you will be at liberty to cancel.

Please let us hear from you promptly as to whether you will be interested in the placing of your order for these three cars."

Letter dated January 30, 1920, from The George N. Comfort Lumber Company, Cleveland, O., to The West Michigan Flooring Co., Manistee, Michigan, reading as follows:

DEFENDANTS' EXHIBIT W-9 $\frac{1}{2}$ EXTRA

"GENTLEMEN: We have some trade that needs Maple Flooring and according to letters we received from you some time ago you intimated that possibly you would be in a position about this time to take on some business.

In the past we have sent you some business and would like to be able to get enough for our customers. We realize that Maple Flooring is scarce and do not ask you to give us any special consideration, but would like to be put in a position to get a few cars. Can't you arrange to accomodate us?"

Letter from West Michigan Flooring Company to The George N. Comfort Lumber Company, dated Feb. 3, 1920, as follows:

DEFENDANTS' EXHIBIT W-9 $\frac{3}{4}$

"GENTLEMEN: In response to your letter of January 30th with reference to Maple Flooring. We have really had very little to offer in this product during the past six months as we have been and are still in an oversold condition on everything that we produce

[fol. 619] in this product. As near as we can estimate now we are sold ahead of our machines to at least April 15th on everything in both 3/8" and 13/16".

We are not quoting any prices although we have recently taken on a little business at open prices to be invoiced at the prices in effect on our 'Acme' Brand Maple Flooring at the time of shipment. If such a proposition appeals to you and if you will submit a list of your requirements, we will be pleased to consider the matter of booking same in such amounts or sizes that we may be able to furnish within 90 days but we will not care to take on any orders even at the open price for shipment later than ninety days.

It is our policy while the demand for Maple Flooring is as great as it is now to take on no new accounts as we find that we cannot begin to supply the wants of our old established trade. You have handled more or less of our Maple Flooring in the past and we want to recognize you by offering you at least a fair proportion of our stock. Our output of Maple Flooring is comparatively small being about 6,000,000 ft. per year and when divided among our various connections, it doesn't mean very much for any one during these unusual times."

Letter dated November 26, 1920, from Ft. Wayne Builders Supply Company, Fort Wayne, Indiana, to West Michigan Flooring Company, Manistee, Michigan, reading as follows:

DEFENDANTS' EXHIBIT W-10

"GENTLEMEN: Kindly quote us on one car (approximately 30,- [fol. 620] 000 feet) 13/16 x 3 1/4" Factory Maple Flooring. Price to be F. O. B. cars, Ft. Wayne, Ind. In making quotation advise how soon you can make shipment if given the order. Thanking you in advance for a prompt/y reply, we remain."

Letter from West Michigan Flooring Company, dated November 29, 1920, to Fort Wayne Builders Supply Company, reading as follows:

DEFENDANTS' EXHIBIT W-10 1/4

"GENTLEMEN: In response to your letter of November 26th your inquiry for Factory Maple Flooring. We are pleased to quote you our 'Acme' Brand Michigan product f. o. b. Fort Wayne, Ind. rate less \$1.50 Per M. and the usual 2% cash discount:

30,000 ft. 13/16" x 3 1/4" fc. Factory Maple Flooring @ \$82.50 per M.

We have this item in stock available for immediate shipment and for which we will welcome your order."

Letter dated December 1, 1920, Fort Wayne Builders Supply Company to West Michigan Flooring Company, as follows:

DEFENDANTS' EXHIBIT W-10 $\frac{1}{2}$

"GENTLEMEN: We acknowledge receipt of your quotation under date of November 29th, but regret to inform you that we lost the order to other parties. Our prospect purchased his requirements at \$75.00 F. O. B. Ft. Wayne.

We thank you for your quotation and hope that the next time we both may be more successful."

[fol. 621] Letter from West Michigan Flooring Company to Fort Wayne Builders Supply Company, dated December 3, 1920, reading as follows:

DEFENDANTS' EXHIBIT W-10 $\frac{3}{4}$

"GENTLEMEN: We wish to thank you kindly for the information contained in your letter to us of December 1st, regarding our recent quotation on Maple Flooring. We are sorry to have lost out on this business and hope that we may have better success on future opportunities."

Letter from West Michigan Flooring Company, under date of May 12, 1920, to Giffen & Pfeiffer, Bank Block Building, Denver, Colorado, as follows:

DEFENDANTS' EXHIBIT W-11

"GENTLEMEN: We have established prices on our Maple Flooring as per List No. 41, herewith enclosed at which we will invoice such unfilled open price orders now on our books, that we may be able to ship prior to July 1st, 1920. We will also apply these prices on any new business that we may be able to handle in the meantime for shipment prior to July 1st.

At the present time, the only available item which we have for sale is a quantity of about 100,000 ft. 13/16 x 3 $\frac{1}{4}$ " face Factory Grade.

We have your unfilled orders No. 207 for B. F. Salzer Lumber Co., also your order No. 1203 for Frank Kirchhof Lumber Co., each a car of 13/16 x 2 $\frac{1}{4}$ " face Clear. We expect to have the car for Frank Kirchhof Lumber Co. ready for shipment within the next [fol. 622] four or five days so will you please notify them as to the price at which we propose to invoice and advise us promptly if we may proceed with the loading of their order accordingly. Also take this same question up with the B. F. Salzer Lumber Co. so that we may proceed with the loading of their order as soon as we can get to it without further taking the matter up with you.

You will note that our List No. 41 carries a margin or commission of \$1.00 per M., and this, we realize, is not a sufficient margin under present high prices however, we figure the values quoted in our List No. 41 are enough below the average of other mills to permit you to add a reasonable commission.

We will await your instructions before proceeding with the loading of your order No. 1203."

Letter from Wyman-Allen Lumber Company, Boston, Massachusetts, to West Michigan Flooring Company, Manistee, Michigan, dated September 23, 1921, reading as follows:

DEFENDANTS' EXHIBIT W-12

"GENTLEMEN: We are in receipt of your quotation on #1 Maple Flooring, but your price is considerable higher than our customer bought for. We thank you for quoting us."

Letter dated September 27, 1921, West Michigan Flooring Company, to Wyman-Allen Lumber Company, Charlestown, 29, Massachusetts, reading as follows:

DEFENDANTS' EXHIBIT W-12A

[fol. 623] "GENTLEMEN: We have your letter of Sep. 23rd in which you ask for price on a car 13/16 x 3 1/4" face Clear Maple Flooring for your yard stock. We have only a small quantity, or less than a carload of this size and grade on hand today and as 3 1/4" Clear accumulates very slowly with us it would be at least 30 days before we could furnish a car.

Subject to prior sale we could make prompt shipment of one half car 3 1/4" Clear and one half car 3 1/4" No. 1 on which we quote you the price of \$85.50 per M for the Clear and \$60.50 for the No. 1 delivered Boston rate.

We have your letter of Sep. 23rd, advising that our recent quotation on 2 1/4" No. 1 was out of line and that your customer bought at a lower price. It has become evident to us that we must revise our values particularly on No. 1 and Factory grades, and accordingly we are enclosing herewith our List No. 52, the basis upon which we trust you will be able to send us some business.

It has always been our policy when establishing prices on our product from time to time to stand pat on these prices and we possibly are making a mistake in doing so under present conditions as there are three or four mills in this territory who evidently do not take costs into account in arriving at selling values, who have no fixed price and are out to meet competition regardless.

Having faith in your good selves to treat us right on any leeway

that we may give you in the question of quoting our Maple Flooring to meet competition, we will until further notice authorize you to quote our product at any reasonable concession necessary from [fol. 624] Price List No. 52, excepting $2\frac{1}{4}$ " Clear, to meet competition of any of the Wisconsin or Michigan mills providing the business can be secured for our Maple Flooring on an equal basis of price. We will not care to make any concession on $2\frac{1}{4}$ " face Clear at this time as we find a ready sale for it at our asking price, in fact, we are sold ahead on it to some extent, and most of the manufacturers are situated in the same way.

All the way 'round, it would seem to us that our List No. 52 is low enough to compete with reliable manufacturers although, if not, we are going out to meet their competition."

Letter, dated November 12, 1921, from Wyman-Allen Lumber Company, Boston, Mass., to West Michigan Flooring Company, Manistee, Michigan, as follows:

DEFENDANTS' EXHIBIT W-12B

"GENTLEMEN: We are in receipt of your detailed letter of the 9th relative to the price basis of your list #53.

We thank you for the privileges given us in your letter for the disposition of your stock. We will keep you fully advised as to inquiries we may receive, and think it best to let you make special prices by wire on such items as you can handle promptly.

Trusting this arrangement is satisfactory, we remain."

[fol. 625] Letter from West Michigan Flooring Company, dated November 9, 1921, to Wyman-Allen Lumber Company, reading as follows:

DEFENDANTS' EXHIBIT W-12c

"GENTLEMEN: The thought has come to our minds since we sent you our revised Price List No. 53 on Nov. 4th that we should have been more explicit in our letter to you relative to these advances. You of course appreciate the fact that any outstanding quotations that you may have made on the old basis of price we will protect for acceptance within a reasonable length of time providing we can furnish the stock and assuming that the same would be for reasonably early shipment. Also please take into account that we wrote you under date of September 27th authorizing you to meet legitimate competition providing it develops that our prices on any particular items may be out of line with those quoted by other reliable Michigan or Wisconsin mills. This same proposition holds good with respect to our revised prices as quoted in list No. 53.

It is not our idea to burden you with prices at which you cannot secure orders in competition with other reliable manufacturers. The situation regarding Northern Hardwoods develops that there is a considerable scarcity of rough stock on hand among the mills due to many of them having been closed down for the past several months and those who now have rough stocks to offer have made some sharp advances in prices on the same during the past thirty days which [fol. 626] must necessarily mean an advance in prices on the finished product. We may be a little previous in the large advance we made on 2¼" No. 1. However we are in an oversold condition on this particular item, being in position now to accept orders for 2¼" No. 1 only in part cars for loading in mixed cars with other items of Maple Flooring. So as a protection to ourselves in the fact of an advancing market on the raw material, we considered it advisable to withdraw the prices at which we were quoting this stock."

Letter dated October 28, 1921, from Webber Lumber & Supply Company, Fitchburg, Mass., to West Michigan Flooring Company, Manistee, Mich., reading as follows:

DEFENDANTS' EXHIBIT W-12-D

"GENTLEMEN: We are quoted by three different concerns on 2¼" Clear Maple Flooring, the price of \$90.00 subject to our usual commission.

Is this your price? If so, advise by wire, as we are going to buy a car right away. It is such a long time since we have bought from you, as your prices have been out of line, that we are going to give you this chance on this particular car."

Letter from West Michigan Flooring Company, dated October 31, 1921, to the Webber Lumber & Supply Company, Fitchburg, Mass., reading as follows:

DEFENDANTS' EXHIBIT W-12-E

"GENTLEMEN: We are this afternoon in receipt of your letter of [fol. 627] October 28th advising that you are in the market for a car of 2¼" face Clear Maple Flooring that you have been quoted a price of \$90.00 per M subject to commission from three different mills and we infer that you would offer us this business on an equal basis of price.

We thank you very kindly for your consideration in this matter, however we would not be interested in taking the order at the price to which you refer. The very lowest price that we would consider for a car of 13/16" x 2¼" face Clear Maple Flooring delivered to you on a Boston, Mass. rate and subject to \$2.00 per M. commis-

sion would be \$94.50 per M. or \$92.50 net no commission. This is the lowest price at which we have sold any of our 2¼" Clear, in fact we are considering at this time the proposition of advancing our price on this particular size and grade \$5.00 per M.

If you are able to buy a good standard make of 2¼" face Clear Maple Flooring at \$90.00 less commission, it would look to us like a mighty good buy under existing conditions. We believe we are making no mistake in predicting that those manufacturers who have not already done so will very shortly be advancing their prices on both 2¼" Clear and No. 1 grades. You may be interested to know that both of these items are now in a considerably oversold condition among the manufacturers.

We look for No. 1 particularly to be advanced anywhere from \$10.00 to \$15.00 per M. and Clear from \$5.00 to \$10.00 per M. The spread in price at the present time between Clear and No. 1 grades is altogether out of proportion and this condition is bound [fol. 628] not to exist very long with a reasonable demand for this product. The Factory grade of course is the weak sister on the list right now.

We will appreciate your order for a car of our 'Acme' Brand Clear Maple Flooring at the price above quoted providing we could make quick shipment on the same."

Letter from John C. Hill Lumber Company, St. Paul, Minn., dated November 28, 1921, to the West Michigan Flooring Company, Manistee, Michigan, reading as follows:

DEFENDANTS' EXHIBIT W-12-F

"DEAR SIR: For your information our Mr. Kirkpatrick saw quotations of the Tozer Lumber Company made to a very good customer of ours delivered small lots F.O.B. the job:

13/16 x 1½"	#1 Maple	at \$55.
13/16 x 2¼"	" "	66.
13/16 x 2¼"	#1 Beech	55.00."

Letter from West Michigan Flooring Company, dated December 1, 1921, to John C. Hill Lumber Company, St. Paul, Minnesota, reading as follows:

DEFENDANTS' EXHIBIT W-12-G

"GENTLEMEN: We have your letter of November 28th in which you give us a list of prices recently seen by your Mr. Kirkpatrick as having been quoted by Tozer Lumber Company to a very good customer of yours and which ranged considerably lower than our prices.

When we sent your our list No. 54 on November 18th, we were [fol. 629] under the impression that there would be little if any

variation in these prices from what the large northern producers would be quoting. Would it be a fair question if we asked you to make us up a schedule of prices at which you are authorized at the present time to take orders for J. W. Wells and the Horner stock, so that we may compare our prices as quoted in our List No. 54 with what you are authorized to sell for other mills with whom you have connections? We are not only interested in having this comparison on the 2¼" but on all widths and grades of ¾" and 13/16".

In all of our experience in the manufacturing and marketing of Maple Flooring, we have never been at sea to such an extent regarding competitive prices as we are at the present time. It has always been our object to keep in line with the market as near as we know how and we want to put you on a basis where you do not have to go out and ask more for the 'Acme' brand than you do for other makes of Maple Flooring that you are handling. The other manufacturers whom you represent do not compare notes with us at any time and the only way we can get together intelligently on this subject it seems, is through your cooperation with us in the matter. So if you will be kind enough to submit a schedule of the prices that other Maple Flooring mills whom you represent authorize you to sell at, it will give us something to work on and we see no reason why we will not be able to meet such prices with the 'ACME' Brand.

If you have lower prices from your other connections it is not [fol. 630] good business to have to ask higher prices for 'Acme', but at the same time we do not wish to establish unreasonable competition with prices on 'Acme' below the other manufacturers when we fully realize that our stock is just as good in every way.

We wish you would give this matter your prompt attention and write us fully on the subject so that we may understand what we are required to do if necessary to get down to meet the other fellow.

Yours very truly, West Michigan Flooring Co.

P. S.—The writer does not recall the brand of Maple Flooring that Tozer Lumber Company handles."

Letter dated September 28, 1921, from M. J. Dunne, Hardwood Lumber Sales Agent, Chicago, Illinois, to West Michigan Flooring Company, Manistee, Michigan, reading as follows:

DEFENDANTS' EXHIBIT W-12-H

"GENTLEMEN: Your price list #52, and letter of the 27th inst., received and very much appreciated. There is no question but what the policy you are now adopting, is warranted by conditions, for while you were trying to religiously adhere to your fixed scale of prices and trying to maintain even a semblance of stability in the so-called market, others were several laps ahead of you in the race downwards; and instead of being satisfied to meet legitimate com-

petition for whatever little business happened to be going, some of them went one better, and evidently quoted on some inquiries, \$5.00 to \$10.00, or perhaps more, cheaper than they thought any of their competitors would be likely to quote.

[fol. 631] It is hard to believe all you hear about prices; but I will give you one example, as given to me by a man whom I have known for very many years, and whose word I have no reason to doubt. At the time your price on 13/16 x 2 1/4" #1 Maple Flooring was \$69.75, this man advised me that there was some of this kind of stock sold here at exactly \$55.00, and from what I could gather from him, it was sold directly by the mill to a contractor who is not in the lumber business at all. You can draw your own conclusions as to whether this information is authentic or not; but I believe that some of them have been trying to sell to contractors, consumers, and to anybody who would buy, regardless of trade ethics or anything else. I would not like to have anybody form the impression that either in the hardwood lumber or flooring business I was disseminating false information for the purpose of bearing down on the price; but in the past I have seen so much of this underhand price cutting going on in the flooring business, that with all respect to your judgment and hoping that you will accept this suggestion in the spirit in which it is given, I would respectfully recommend that in the future, or at least until conditions show signs of improvement, you do not place too much faith in the information you may receive from any of your competitors regarding the prices which they are supposed to be quoting, as it is quite probable that they might be confidentially trying to sell it at a very much lower price.

I am getting busy on your new schedule of prices, and hope to be [fol. 632] able to send you some business in the very near future.

"Thanking you, I am."

Letter dated September 27, 1921, West Michigan Flooring Company, Manistee, Mich., to M. J. Dunne, 4451 Congress St., Chicago, Ill., reading as follows:

DEFENDANTS' EXHIBIT W-12-1

"DEAR SIR: Although we have not had any advice from you, one way or the other, as to the condition of the maple Flooring market in Chicago, we assume that you are fairly in touch with the situation, and judging from what information we have been able to gather, our prices on our product, generally speaking, have been too high.

We, under the circumstances, have decided to revise our prices and we are enclosing herewith a new List, our No. 52, which quotes considerably lower prices on No. 1 and Factory than any prices we have named you heretofore.

The thought occurs to us that we have been making a mistake this year in establishing prices on our "Acme" Brand Maple Flooring from time to time and holding our lists ironclad, as it seems that some of our competitors do not have such a thing as a fixed price but

are simply out to meet competition regardless. We have about decided to do the same thing, with the exception of the item of 2 1/4" face Clear, we will entertain reasonable concession on any of all of the other sizes and grades from prices quoted in our List No. 52 if necessary to meet the competition of other reliable Michigan and Wisconsin mills providing business can be had on an equal basis [fol. 633] of price with them. We would suggest therefore, that when soliciting for our account, that if you run up against lower prices and can get the business on an equal basis, kindly wire us at our expense and if the necessary concession is within reason, we will meet it. We will not want to apply this to 13/16 x 2 1/4" face Clear as we find a ready sale for this item at our price. We are now sold ahead of our machines on it to some extent and we understand that most of the manufacturers are sold ahead on 2 1/4" Clear. Yours truly."

Letter from M. J. Dunne, 4451 Congress St., Chicago, Ill., dated October 7, 1921, to West Michigan Flooring Co., Manistee, Michigan, reading as follows:

DEFENDANTS' EXHIBIT W-12-J

"GENTLEMEN: On receipt of your letter enclosing inquiry from the Sterling Lumber & Supply Co., for the car of 13/16 x 2 1/4" #1 Maple Flooring I took this matter up with them but at that time they did not have all the quotations in. I quoted them \$56.00 on the #1, and as they also wanted a price on the Clear I quoted them \$89.00.

On taking this matter up again today with their Mr. Dick, he advised me that they had bought a mixed car, of 3/4 Clear and #1, and while we were not so very much out of line on the #1, our price was altogether too high on the Clear; and on asking him as a special favor to let me have an idea of what he paid for the Clear, he said that he had bought it at \$84.00, which is exactly \$5.00 less than our price delivered Chicago; so in view of this there does not seem to be any chance of getting any business on the Clear and #1 at \$89.00 [fol. 634] and \$56.00. It is evident that some of the mills are so desperate for an order that supposed market prices mean nothing to them; and while there is not very much more room to go down on the Factory grade, it is evident that the end of the price-cutting on the Clear and #1 is still a long way off. However, I believe that a turn for the better is soon coming; and if they would only have backbone enough there would be enough business for all of them; but when they make a price war and cut each other's throats on every little inquiry that is sent out, there can be nothing but demoralization. I suppose the next thing we will see, will be some of them offering Clear at about \$75.00 and #1 at \$50.00. It reminds me of the time the oak flooring market was racing downwards about the first of the year, when the manager of a retail lumber yard here showed me one quotation on a car of 13/16 x 2 1/4" Select Plain White Oak

Flooring at \$115.00, and another on the same kind of stock for \$85.00.

I will continue to keep you advised of any information considered reliable, which I receive with reference to prices, and shall be glad to have any suggestions you may have to offer in this connection. Yours very truly."

Letter dated October 11, 1921, West Michigan Flooring Company to M. J. Dunne, Chicago, Ill., reading as follows:

DEFENDANTS' EXHIBIT W-12-K

"DEAR SIR: We have your letter of October 7th regarding your experience in quoting Maple Flooring in the Chicago market. We note that Sterling Lumber Company who recently made inquiry for Maple Flooring purchased a mixed car of the Clear and No. 1, and [fol. 635] for which they claim to have paid \$84.00 for the Clear. We do not doubt this as we believe we could name a couple Northern Michigan and Wisconsin mills that would quote this price and we are wondering if the quality of their product is not in keeping with the price they ask for it.

It is our experience with respect to 2¼" Clear that we have no difficulty in getting all of the business that we can handle for this particular size and grade at our asking price, in fact we are sold ahead on 2¼" Clear to a considerable extent and during the past thirty days we have been confining our sales of this item to less than carlots for loading in mixed cars with other items of Maple Flooring. Under the circumstances and with the demand that we have for our 2¼" Clear, we cannot consistently meet the low prices of some two or three mills who evidently haven't the connections or reputation for their make of flooring to command a better price. Yours very truly."

Letter dated December 1, 1921, B. W. Cross Lumber Company, Pittsburgh, Pa., to West Michigan Flooring Company, Manistee, Mich., reading as follows:

DEFENDANTS' EXHIBIT W-12-L

"GENTLEMEN: Your favor of the 29th confirming wire regarding Maple Flooring received. We also acknowledge receipt of your price list. Customer could not be induced to buy anything but 2¼" face No. 1. At first he stated he might want a little Clear in this car, but he cut this out and yesterday bought a car of No. 1 from another dealer here, or possibly from a Commission man, at \$68.50 for 2¼" face. This, you will note is your price on 2" face, but customer [fol. 636] would not consider this width, so we had to pass the burgh, Pa., reading as follows:

There may be some Maple flooring business in this territory soon

after the first of the year, and we would be glad if you would let us have your stock lists regularly, and when any changes are made in prices, send us revised price list. Yours very truly."

Letter dated December 3, 1921, from West Michigan Flooring Company, Manistee, Mich., to B. W. Cross Lumber Company, Pittsburgh, Pa., reading as follows:

DEFENDANTS' EXHIBIT W-12-M

"GENTLEMEN: This acknowledges receipt of your interesting letter of December 1st regarding our quotation No. 430 on Maple Flooring. We are impressed with the manner in which you have informed us regarding this particular transaction and we thank you kindly for the information you have given us on the subject.

We have you on our mailing list for stock sheets and any changes in prices that may take place and we trust that we may eventually get together on some Maple Flooring business. We are manufacturing in the "Acme" Brand Maple Flooring a quality of product that we have reason to know is the equal in quality to the best of its kind in the market. We do not have any established trade in the Pittsburgh district, in fact we have made no special effort to establish a connection in Pittsburgh to push our product.

The thought occurs to us that if you are interested to the extent [fol. 637] of giving the "Acme" brand preference on an equal basis, that we might be able to work together in the matter and secure some of the Maple Flooring business in your territory. We realize the necessity under present conditions, of not establishing "iron-clad" prices, in other words if a connection with whom we might be dealing could be relied upon to give us reliable information as to any lower prices that might be quoted to prospective customers on other makes of flooring that would compare favorably with our make, we would be very glad to consider such competition with the object in view of meeting it if possible.

The values quoted in our list No. 54 copy of which we mailed you on November 29th, are supposed to be representative of the market at this time and we believe these prices on the 13/16" x 2 1/4" particularly Clear and No. 1 grades, are being well maintained as both the Clear and No. 1 2 1/4" are now in an oversold condition taken as a whole, among the manufacturers. We are not so sure about the 13/16" x 2" and 3 1/4" and we presume if any particular manufacturer has a large stock or a surplus of these items, that he will consider concessions on orders for prompt shipment. It is these conditions that in our judgment should make our prices elastic to some extent so that the wholesaler in his efforts to secure business for our account should be considered by being authorized if possible to meet just such conditions.

Do you command a fair volume of trade in Maple Flooring in the Pittsburgh district and are you favorable to any other particular make of Maple Flooring and if not would you be willing to work with [fol. 638] us in the sale of the "Acme" Brand along the lines above

suggested? Kindly let us hear from you on this subject. Yours very truly."

Letter from B. W. Cross Lumber Company, dated December 14, 1921, to West Michigan Flooring Company, Manistee, Michigan, reading as follows:

DEFENDANTS' EXHIBIT W-12-N

"GENTLEMEN: Your letter of the 12th received and in reply would say that the proposition as you put it up to us is entirely satisfactory. We will work with you on all straight carload business we can dig up, and should we occasionally be obliged to figure on only part cars of Maple flooring to be filled out with Pine or Hemlock, we will go to some of the concerns that are in position to handle business in this manner.

We are satisfied from the contents of your letter that you are very well posted on general conditions at present. There are always a few fellows who will cut the price to get an order, and under present market conditions we believe, as you state in your letter, that some concerns may cut as much as \$5.00 per M if they think it's necessary.

On the inquiry for 2¼" face No. 1 we had up with you recently we found very few of the concerns to which we mailed our inquiry were in position to quote on 2¼" face No. 1, and what few quotations we did get were right in line with your list. We believe one concern quoted us more than your list on the Clear. The chances [fol. 639] are that stock conditions at all of the Maple Flooring mills are such that a cut in price on 2¼" face Clear or No. 1 was hardly justified.

Send us your lists regularly and as stated above, we will use your prices when figuring on carload lots, and if your prices will not get the business and we can find out what cut is necessary, and against what competition we are figuring, we will follow your suggestion and give you the information and thus give you an opportunity to meet the price and enable us to take the order if you consider the business desirable. We will try at all times to give you reliable information.

Hoping 1922 business may amount to considerable on our books with your Company, and wishing you the compliments of the season, we are, Yours very truly."

Letter from West Michigan Flooring Company, Manistee, Michigan, to the B. W. Cross Lumber Company, Pittsburgh, Pa., dated Dec. 12, 1921, reading as follows:

DEFENDANTS' EXHIBIT W-12-O

"GENTLEMEN: The writer who was absent the greater part of last week notes upon his return your very interesting letter of De-

ember 5th which is a reply to ours of the 3rd inst. on the subject of Maple Flooring.

We realize the fact that many of the big jobs are figured direct with the contractor by some of the manufacturers. We do not conduct our sales along these lines, in fact we do not aim to sell any contradictory.

We would be unable to meet your requirements in shipping Hemlock dimension or White Pine Flooring, Siding, etc. in mixed cars [fol. 640] with Maple Flooring as ours is a strictly Maple Flooring proposition and we have no other lumber products that could be loaded with it.

In view of the situation and taking into account the conditions as you have outlined them, it perhaps would not be altogether fair to either of us to enter into a definite selling arrangement. We think it would be a better plan to leave this matter open and if you will submit your inquiries to us as they come up, we will use our best efforts to put you on the right track to secure the business when we are able to supply the stock.

Such a thing as a price list of iron-clad prices on any particular make of lumber product looks almost like a joke today in view of the scramble that is going on among us all to secure business. We do issue a price list and our latest issue is what we call our 'List No. 54' and copy of which we are enclosing herewith. This list is supposed to represent in a general way the present market or asking prices among the various manufacturers at this time.

This list we adopted on November 18th and we have since received various reports from our different connections to the effect that some of the mills are holding to this list also while others are making concessions here and there all along the line. It seems to us that if we can have your confidence it would be a better plan to make our prices elastic to some extent to as to enable you to meet reasonably lower prices that may be quoted by other responsible mills who put out a first class product. We could say to you that the prices in the [fol. 641] enclosed list are iron-clad but we are sure that with such a proposition you would not be getting anywhere.

If you will work on the basis of our list No. 54 and it should develop that you run up against lower prices and can secure the business on an equal basis, we wish you would use the telegraph wires and get in communication with us at our expense telling us just what we must do to meet the other fellow and we assure you that we will do our level best from this end.

We will take as an example our prices on 13/16" x 3 1/4". We understand that some of the manufactures will quote 3 1/4" factory practically as low as 2 1/4" Factory and there isn't any question in our minds but what 3 1/4" Clear and No. 1 is being sold here and there at \$5.00 per M. below our list No. 54 the 2 1/4" Clear and No. 1 prices we believe are being fairly well maintained although of course we do not know just how conditions are in the Pittsburgh district.

Kindly consider carefully our ideas as above suggested and let us hear from you further on the subject. In the meantime it is our thought that if we can work together in this matter we will get

somewhere and secure a reasonably fair volume of business. We are manufacturing a quality of product in our 'Acme' Brand Maple Flooring which we do not hesitate to offer in competition with the best of its kind on the market. Yours very truly."

[fol. 642] Letter dated August 15, 1921, West Michigan Flooring Company, Manistee, Mich., to Charles H. Bracken, 17 Lindsey Street, Boston, Mass., reading as follows:

DEFENDANTS' EXHIBIT W-13

"DEAR SIR: In response to your letter of the 11th inst. in which you advise that in your opinion we would have to reduce our prices on our Maple Flooring more than the \$5.00 referred to in our letter of the 9th inst. if we are to get any business from your territory. We do not believe conditions are quite so bad as you picture them, and we will not under the circumstances make any lower prices.

We know of considerable Maple Flooring going into your territory from Michigan and while some of it is being sold at almost the same prices we quoted you and possibly some of it at lower prices, we do know of about twenty-five carloads that have moved into the New England market during the past three weeks at prices \$5.00 per M. higher than those which we are now quoting, this stock having been sold not over thirty days ago. Yours very truly."

Letter from West Michigan Flooring Company, dated September 7, 1921, to B. C. Baer & Son, Reading, Pa., reading as follows:

DEFENDANTS' EXHIBIT W-14

"GENTLEMEN: Since we wrote you on August 30th in which we sent you our present Price List No. 51 on our 'Acme' Brand Maple [fol. 643] Flooring, we have decided to offer a special concession on our 13/16" x 2 1/4" and 3 1/4" face Factory grade of which we have quite a large stock, our object being to reduce these items as quickly as possible to provide piling space for other items of Maple Flooring.

We accordingly will accept orders for prompt shipment against the 2 1/4" Factory at a concession of \$3.00 per M. from our list No. 51 and the 3 1/4" Factory at a concession of \$5.00 per M. from our list No. 51. As you made inquiry to us on Aug. 24th, for 11,000 ft. 2 1/4" and 7,000 ft. 3 1/4" Factory, we trust these special prices will appeal to you on this particular inquiry providing the business has not already been placed.

We are not sending out these prices broadcast, merely offering these concessions to a few from whom we have in mind we may get satisfactory response. You will understand that these prices apply for quick shipment only. Yours very truly."

Letter dated August 9, 1921, from West Michigan Flooring Company, Manistee, Michigan, to American Sash & Door Company, Kansas City, Missouri, reading as follows:

DEFENDANTS' EXHIBIT W-15.

"GENTLEMEN: Under date of July 23, we sent you copy of our Price List No. 50 covering our 'Acme' Brand Maple Flooring.

With the object in view of meeting some of the lower prices that are being passed around, we will make a concession of \$5.00 per M [fol. 644] from this list on anything that we may be able to furnish for Prompt Shipment in 13/16" Maple Flooring, all widths and grades. This concession does not cover 3/8".

We trust that we may be able to serve you in your Maple Flooring trade requirements on this basis. Yours truly."

"The above letter sent to firms on reverse side of sheet."

(Reverse Side of Sheet)

Wistar, Underhill & Nixon.....	Philadelphia, Pa.
R. A. & J. J. Williams Co.....	"
Wm. Whitmer & Sons.....	"
White Gratwick & Mitchell, Inc.....	North Tonawanda, N. Y.
Wiles-Chipman Lumber Co.....	St. Louis, Mo.
Julius Seidel Lumber Co.....	"
O. H. Sample Lumber Co.....	"
Bert L. Stephenson.....	Wichita, Kansas.
Woodward & Son.....	Richmond, Va.
The Stevens Lumber Co.....	Boston, Mass.
Stevens-Eaton Co.....	New York City.
G. M. Stanton.....	Carroll, Iowa.
The H. A. Savage Lumber Co.....	Boston, Mass.
The John C. Orr Co.....	New York City.
Palburn, Inc.....	Buffalo, N. Y.
Picket, Hyde & Langgans Co.....	Johnstown, Pa.
R. B. Ragon.....	Oklahoma City, Okla.
Kirkpatrick Lumber Co.....	Cincinnati, Ohio.
A. J. Levy Lumber Co.....	Philadelphia, Pa.
Wm. M. Lloyd Co.....	Charlotte, N. C.
Clifton F. Leatherbee.....	Boston, Mass.
Northern Lumber Co.....	North Tonawanda, N. Y.
The Hedden-Clark Lumber Co.....	New York City.
H. A. Hollowell & Co.....	Cincinnati, Ohio.
Thomas B. Hammer.....	Philadelphia, Pa.
Hess Lumber Co.....	St. Louis, Mo.
Charles H. Bracken.....	Boston, Mass.
The Chicago Lumber Co. of Omaha....	Omaha, Neb.
Baker Lumber Co.....	Worcester, Mass.
Boeckeler Lumber Co.....	St. Louis, Mo.

Wyman-Allen Lumber Co.....	Charlestown 29, Mass.
E. J. Sterner & Co., Inc.....	New York City.
H. I. Isbell.....	Elkhart, Ind.
Geo. N. Comfort Lumber Co.....	Cleveland, Ohio.
The Central Lumber Co.....	"
Erie Lumber Co.....	Erie, Pa.
John Buffum.....	Boston, Mass.
G. H. Hyatt.....	Whitehall, N. Y.
Boston Lumber Co.....	Boston, Mass.
Webber Lumber & Supply Co.....	Fitchburg, Mass.

[fol. 645] Letter dated July 28, 1921, from Sam E. Barr, Wholesale Lumber 50 Church Street, New York, to West Michigan Flooring Company, Manistee, Michigan, reading as follows:

DEFENDANTS' EXHIBIT W-16

- "GENTLEMEN: I wired you yesterday as per copy of message enclosed and have your reply quoting \$68.50, less commission on the 13/16 x 2¼" No. 1 Maple Flooring for Lansing, Michigan. Also note you could furnish only about 100,000'. Your price will never get the business, as customer already has a price on it of \$60.00, and I expect they will buy it for \$59.00 before they get through dickering with this particular mill, as they seem very anxious for the business.

Thanking you for your wire, I am, yours very truly."

Letter dated Aug. 1, 1921, from West Michigan Flooring Company, to Sam E. Barr, 50 Church St., New York City, reading as follows:

DEFENDANTS' EXHIBIT W-16½

"DEAR SIR: This acknowledges receipt of your interesting letter of July 28th with reference to our wire quotation of \$68.50 per M less commission on the 2¼" No. 1 Maple Flooring for Lansing, Mich., and in which you advise that customer already has a price of \$60.00 and that you expect they will eventually buy for \$59.00.

When we quoted you our price, we had no idea that we stood any chance as we felt that someone would be so anxious for this business [fol. 646] that it would eventually be placed at a figure that would doubtless result in a loss to the mill. We would very much like to know the name of the mill that will eventually furnish this flooring, and if you have this information, and are willing to give it to us, we will appreciate it, however, if you do not feel disposed to do so, we doubtless will learn of the deal through some one of our friends in this territory. It is always interesting to know the sort of competition we have to buck up against. We know pretty

well about who is putting out a strictly first class make of Maple Flooring and who is not, so that sometimes a low price does not mean very much to us as it often happens that the low priced fellow puts out a product in keeping with the price he asks for it. Yours truly."

Letter dated January 23, 1922, from Currie & Campbell, Lumber, Philadelphia, Pa., to West Michigan Flooring Company, Manistee, Michigan, reading as follows:

DEFENDANTS' EXHIBIT W-17

"GENTLEMEN: We beg to acknowledge receipt of your telegram on Flooring for Reading, and beg to advise we received a price of \$64.00 for the 13/16 x 2" Face #1, and \$27.50 for 2 1/4" Face Factory, delivered Reading, subject to our commission of \$2.00. We wired the order to the mill on the evening of the 18th, and received the car number from them on Thursday, the 19th. This was good quick action.

Along the line of our communication of the 16th, we are interested in making a connection with you for the sale of your flooring, [fol. 647] and while we do not compliment ourselves to the point that we feel we could sell all the Flooring you make, still we believe in the course of the year we could probably send you some very satisfactory orders, and our idea in doing this would be to work just as closely as possible giving you the benefit of any extra price that we could secure over and above your regular list, and as suggested in our letter of the 16th, we should want to feel if we were in very close competition and were compelled to make an adjustment below your list price, that we would be able to do it, providing however, that the cut would not be a very heavy one. Of course, if we were considerably out of line, we would either drop the matter or take it up with you by wire. We believe that we could get in many instances somewhat better prices on your stock than you list, and probably enough to offset any lower prices that we might have to contend with.

We think that your prices on your Clear and No. 1 are all right, but we do think you are a little bit high on your Factory, and as an illustration, this particular order which went to Reading, our customer had a price of \$27.00 on the Factory, Michigan stock, which we were forced to meet. You will note that we bought it at \$27.50 less \$2.00, which left us a net profit of \$1.50.

On all of our purchases of all kinds of lumber, we carry the account. We have always done this, and feel that this is really the only way a wholesaler can be of benefit to a manufacturer, otherwise, the distributing agency might very readily get the manufacturer into some bad accounts, and his value as a distributor would very soon become void to the manufacturer.

[fol. 648] We discount all of our purchases and sell only to the better class trade.

We note that you do not make any 5/4 flooring. While we occasionally have calls for this and sell some of it, we would have to rely on some other source of supply for this thickness.

We should like very much to have you forward us each time you get out a price list and stock list, three copies. This enables us to keep one here in the office and two to our outside people.

We like that particular clause in your letter in which you advise you are not in the habit of making promises in taking orders, unless you are pretty sure just what you are going to be able to do. This fits in very nicely with our methods, and ought to work for a good smooth running proposition.

We should like very much indeed to get started with you and are going to make an effort to do so, and perhaps if we are able to demonstrate we can handle your stock satisfactorily in this market, you might at some near future date, think it advisable to give us the exclusive sale of your product in a certain, well defined, eastern territory.

Perhaps it might be better for us to leave this rest temporarily, and we will see just what we can do towards sending you a certain amount of business, although we do not think we will be doing a lot of Maple Flooring business probably for the next thirty days.

We will be glad in the meantime to have you outline any particular thought you have in mind regarding a working arrangement, whereby we might advertise your flooring and solicit for your prod-[fol. 649] uct, and awaiting the receipt of your further favor, we are, Yours truly."

P. S.—Please send us two additional price lists #55, with stock lists attached."

Letter from West Michigan Flooring Company dated January 27, 1922, to Currie & Campbell, Philadelphia, Pa., reading as follows:

DEFENDANTS' EXHIBIT W-17 $\frac{1}{4}$

"GENTLEMEN: We beg to acknowledge receipt of your letter of January 23rd on the subject of the sale of our Maple Flooring through you and the contents of which are carefully noted. In line with your request we are enclosing two additional copies of our price list No. 55 with stock lists attached and we are marking up our mailing list so that you will hereafter receive of these lists and stock sheets whenever we issue them.

We note in the third paragraph of your letter that you consider our prices on the Clear and No. 1 all right, but that you think we are a little bit high on our Factory. This does seem to be the case as evidenced by reports which we have received recently from various sources. While we will not issue a Revised Price List as a result, we realize that it will be necessary for us to make concessions from this list on the Factory if we expect to secure any volume of business in this particular grade which just now happens to be the items on which we are long.

We would dislike awfully to go below \$29.00 less commission delivered Philadelphia rate on 2¼" Factory but judging from your [fol. 650] experience in quoting this stock the \$29.00 price would also be out of line to some extent. The Factory grade flooring which we are now producing we think is better than the average quality and it is running especially good to long lengths for this particular grade. Possibly within another thirty days the price may stiffen up a little.

The general feeling in this territory in which Maple lumber is produced is that rough Maple suitable for flooring purposes is bound to advance a little this Spring over prices that were being obtained last Fall. The input of northern hardwood logs is not going to be anywhere near normal this winter and with anything like a fair demand for Maple Flooring it looks to us as though rough flooring stocks will be rather a scarce article and you of course know what this will mean.

We note that it is your idea to work with us as closely as possible in the sale of our flooring, giving us the benefit of any extra price that you could secure over and above our regular list and at the same time having our permission to make reasonable adjustments below our list prices when necessary to meet competition providing however that the cut would not be a very heavy one. Perhaps this would be the most satisfactory way in which to handle the proposition. It develops however that our present prices on the Clear and No. 1, also the Factory so far as that is concerned, are now so close to production cost as to leave a very small margin in the transaction for us. We have realized the necessity of this very close figuring under existing conditions, however with an improved demand the [fol. 651] thing ought to work back to a basis where we can again figure a reasonable margin of profit and base our lists accordingly and in which event we can consider more substantial concessions here and there when necessary to meet competition.

The thought also occurs to us that we may cross wires and compete with ourselves if we are not very careful in the way of making concessions through you especially in view of the fact that you will not at the start at least be acting as our exclusive representative. This might come about by other wholesalers in your territory having our quotations and you competing with them on the same Maple Flooring. In any event we are willing to try this proposition out with you, having faith in your good judgment to handle the matter in a way that will prove most profitable to us both.

We like the idea of your carrying the accounts and we agree with you that this is really the only way a wholesaler can be of benefit to a manufacturer.

We are anxious to get started with you and if you are able to demonstrate that you can handle our stock satisfactorily and are satisfied with our methods of doing business, we can see no good reasons why at some near future date it would not be advisable to give you the exclusive sale of our product in a certain well defined eastern territory. We would be pleased to know if you have any demand or

call for 13/16" x 3 1/4" face or does your trade run largely to 2 1/4". We of course produce a certain amount of 3 1/4" which is usually a rather slow seller and for which orders are always welcome. [fol. 652] It develops that at the present time we are sold up quite close to our machines on 13/16" x 2 1/4" face No. 1. We have in stock however a very fine lot of 2 1/4" Clear available for immediate loading. Yours very truly."

Letter dated February 6, 1922, from Sam E. Barr, Wholesale Lumber, Philadelphia, Pa., to West Michigan Flooring Company, Manistee, Mich., reading as follows:

DEFENDANTS' EXHIBIT W-17 1/2

"GENTLEMEN: This will acknowledge receipt of your letter of Jan. 27th with price list on Maple Flooring to apply on orders for shipment during February. We thank you very much for same and will be glad to send you any orders that we can secure, but of course you know as well as we do the present chaotic condition of the Maple Flooring market. If our old friend Horner succeeds in getting rid of the stock he has it will probably help some, as he is the only one I have heard of who is making a price as low as \$25.00 on Factory, although I have had several of my customers tell me that they have had prices as low as \$27.00.

Prices on 2 1/4" No. 1 seem to range from \$68 to \$73.00 and on Clear, \$95.00 seems to be the average.

There is quite a variation in prices on 3 1/4". Your price on 3 1/4" Factory is as low as any I have seen, but 3 1/4" No. 1 has been quoted as low as \$63.00 and 3 1/4" Clear as low as \$83.00, so there you are.

I certainly do wish that business would get good enough so that prices could be made more stable. It gives me a great deal more pleasure to send an order to a mill that I know they can make a [fol. 653] profit on, than to send at some of those competitive prices that I know when they get the order they are bound to lose money on.

I will be very glad to keep you posted as to price conditions in this particular territory, and will be glad to have you keep me posted as to any surplus stock that you may want to move from time to time. Yours very truly."

Letter from West Michigan Flooring Company, dated Feb. 8, 1922, to Sam E. Barr, 50 Church St., New York City, as follows:

DEFENDANTS' EXHIBIT W-16 3/4

"DEAR SIR: We are today in receipt of your letter of the 6th inst. an acknowledgment ours of January 27th in which we sent you our price list on Maple Flooring. We wish to thank you kindly for the information contained therein as to market conditions as you find them on Maple Flooring in the Philadelphia territory.

We realize that we have been quoting a very low price on the 3¼" Factory and in fact we are today sold up on all of the 3¼" Factory which we have in stock as a result. During the depression we were caught with a considerable quantity of low grade Maple on our hands which we were forced to move and which resulted in the producing of a considerable quantity of Factory and as we had to have warehouse space for other items of Maple Flooring in order to keep our plant in operation, we were simply forced to make prices that would move it quickly. It also develops that we are today sold up [fol. 654] to our machines on 13/16" x 2" Clear and we are over-sold now to the extent of about 30 days on the 2¼" No. 1.

We like that paragraph in your letter in which you express yourself as being in hopes that business will soon get back to a basis where there will be at least a reasonable margin of profit in Maple Flooring. There are a great many buyers who today consider that the Maple Flooring mills are asking altogether too much money for their product but these fellows are not familiar with the flooring manufacturing operation or they would not feel that way about it. At present prices as an average proposition we are all playing pretty close to the cushion, in fact too close for comfort and one or two things must shortly happen if business conditions get back to a normal basis, either the rough Maple must be had at lower prices or the finished flooring must command higher prices.

We assure you that we will appreciate any information you can give us from time to time as to conditions in your particular territory and in the meantime if we make any price changes, we will advise you. Yours very truly."

Letter dated August 15, 1923, from The Ohio State Lumber Company, Cleveland, Ohio, to The West Michigan Flooring Company, Manistee, Mich., reading as follows:

DEFENDANTS' EXHIBIT W-18

"GENTLEMEN: Our intelligence department composed of two salesmen, Mr. A. B. Phillips and the writer, advise that neither you [fol. 655] nor ourselves have lost out on any maple flooring business during the past few weeks because there has been very little of this commodity purchased. We, of course, cannot and do not sell every consumer in Cleveland, but we do know that our regular customers have been reluctant in placing orders for maple flooring and, in fact, all other commodities.

We anticipated the instructions in your letter of the 13th inasmuch as all of our other connections have instructed us to meet any legitimate competition. This is the time when salesmanship does not count for anything, but is the time when offer and order-takers are in their proper element.

We assure you that when we have an opportunity to quote on maple flooring and find that your prices will not secure the business

we will emulate the average commission man and wire you our customer's offer. Yours very truly."

Letter from West Michigan Flooring Company, dated August 13, 1923, to The Ohio State Lumber Company, Cleveland, Ohio, reading as follows:

DEFENDANTS' EXHIBIT W-18-A

"GENTLEMEN: In the course of following up quotations made by us on the 'Acme' Maple Flooring during the past few weeks, we have been advised in many instances of the loss of the business on account of our prices being higher than others. Our latest prices are represented in our price list No. 67, copy of which you have in your files.

[fol. 656] It is our desire to keep in line as nearly as possible with values quoted on other reliable makes of Maple Flooring and assuming that you give us the preference on an equal basis, we would greatly appreciate an expression from you as what your experience has been in this direction. In other words if the prices we authorize you to quote do not meet competition in your market, will you frankly tell us so and we will endeavor to put you and ourselves on the right track so that business will not escape us as a result of competitors naming lower prices on a quality of product that may be somewhere the equal of ours.

These are times apparently when everyone is out hustling both tooth and nail for an order so if we may have your cooperation in this matter, we will endeavor to work with you in a manner which we hope will result profitably to both you and ourselves.

An expression from you at your convenience will be appreciated and if at any time there is desirable business offered on which our authorized prices do not compete, we would suggest that you wire us at our expense just what the situation is and in which event it will receive our careful consideration. Yours truly."

Letter dated August 16, 1923, from The Tombaugh Lumber Company, Canton, Ohio, to West Michigan Flooring Company, Manistee, Michigan, reading as follows:

DEFENDANTS' EXHIBIT W-18-B

"GENTLEMEN: Nothing carefully yours of the 14th we are frank [fol. 657] to say that we have not booked a single car of Maple Flooring for several weeks, having lost out in every case. As an example, just the other day our salesman advised that he could get an order for a car of 13/16 x 2 1/4 Clear on the basis of \$95.00 to \$97.00. The writer immediately quoted this prospective customer,

who advised him that he had placed the order at \$97.00 Sharon rate.

The point we wish to make is the same one brought out in your letter, which is to the effect that we have both been losing out on this business, due to the fact that there seems to be no established price whatsoever.

The P. L. Frank Lumber Company of Ravenna, Ohio, need a car of 13/16 x 2 1/4 Clear for shipment about October first. We have been trying to obtain this business, and can get it on an equal basis. We know that the order is still unplaced, and that they have been quoted \$105.00, \$102.50 and refused to give us the order the other day at \$100.00.

It is going to be our policy for a little while to get the order on the best basis possible, and then submit it to you for acceptance or rejection. We dislike this very much, but we cannot continue our business unless we sell lumber. Yours very truly."

Letter dated August 21, 1923, West Michigan Flooring Company to the Tombaugh Lumber Company, Canton, Ohio, reading as follows:

DEFENDANTS' EXHIBIT W-18-c

"GENTLEMEN: We wish to thank you very kindly for the information contained in your letter of August 16 regarding market conditions on Maple Flooring as you find them.

We have concluded to revise our prices downward to a few of our old friends in the trade and we accordingly are submitting herewith our Price List No. 68 which you will note by comparison represents a concession of \$5.00 per M from our List No. 67 right straight through on all items of Maple Flooring. These values are figured right down mighty close to the dead line and the basis upon which we hope you may be able to secure an occasional order for our account.

Conditions in the Maple Flooring Industry are peculiar in that the cost of production has not been reduced to any extent and the present prices of raw material are being fairly well maintained. These conditions, however, we presume will adjust themselves in the course of time.

Kindly keep in mind the fact that we have in stock about 30 M' 2" Clear; 33 M' 2" No. 1 and 30 M' 2" factory all of which is exceptionally nice stock. We, of course, also have a good assortment of the other sizes and grades, excepting the 2 1/4" Factory on which we are still oversold to some extent, although we could accept orders for this size and grade in part cars for loading with other items. Yours truly."

Letter dated August 15, 1923, W. M. Klenk Lumber Company, St. Louis, Missouri, to West Michigan Flooring Company, Manistee, Michigan, reading as follows:

DEFENDANTS' EXHIBIT W-18-D

"GENTLEMEN: This to acknowledge receipt of your favor of the [fol. 659] 14th inst., same having reference to prices. In response we want to say that we have been quoting on Maple Flooring right along here for the past ten days or two weeks, but have been unable to secure any business. We were advised the other day in quoting on an inquiry, which thus far has not developed into an order, having used your latest basis, that our price was slightly higher than other quotations that they had received. We told them however to take it up with us again if they secured the business and give us an opportunity of putting it up to you. As you indicate in your letter everybody seems very eager for business and just as we hear it every day, all kinds of prices are being quoted on all kinds of woods. It is just more than likely that some of your worthy competitors have been beating around the bush and making lower prices, but we have no positive evidence to that effect.

If any inquiries come up that we feel are worthy of taking the matter up with you direct we shall certainly be very glad to do so. Yours very truly."

Letter dated August 14, 1923, from West Michigan Flooring Company to W. M. Klenk Lbr. Co., Railway Exchange Bldg., St. Louis, Mo., reading as follows:

DEFENDANTS' EXHIBIT W-18-E

"GENTLEMEN: In the course of following up quotations made by us on the 'Acme' Maple Flooring during the past few weeks, we have been advised in many instances of the loss of the business on account of our prices being higher than others. Our latest prices [fol. 660] are represented in our price list No. 67, copy of which you have in your files.

It is our desire to keep in line as nearly as possible with values quoted on other reliable makes of Maple Flooring and assuming that you give us the preference on an equal basis, we would greatly appreciate an expression from you as what your experience has been in this direction. In other words, if the prices we authorize you to quote do not meet competition in your market, will you frankly tell us so and we will endeavor to put you and ourselves on the right track so that business will not escape us as a result of competitors naming lower prices on a quality of product that may be somewhere the equal of ours.

These are times apparently when everyone is out hustling both tooth and nail for an order so if we may have your cooperation in this matter, we will endeavor to work with you in a manner which we hope will result profitably to both you and ourselves.

An expression from you at your convenience will be appreciated and if at any time there is desirable business offered on which our authorized prices do not compete, we would suggest that you wire us

at our expense just what the situation is and in which event it will receive our careful consideration. Yours truly."

Letter from Erie Lumber Company, Erie, Pennsylvania dated August 15, 1923, to West Michigan Flooring Company, Manistee, Michigan, reading as follows:

DEFENDANTS' EXHIBIT W-18-F

"GENTLEMEN: Replying to your letter of the 13th. [fol. 661] We are using your price list \$67 in quoting our trade. We made several quotations on the basis of this list in the last couple weeks but have lost out in every case, customers telling us prices were out of line.

We advised our representatives to follow out the suggestion you make in this letter which is that if they cannot secure the business at price list #67 we will try and find out what price will secure the order and wire same to you for your approval.

We have an idea that Maple Flooring is like other woods which we find being quoted at a variation of several dollars per M. Oak Flooring, for instance, is being quoted by the best class of mills showing price differences of \$7.00 to \$8.00 per M. Yellow Pine is not quite that bad.

Thank you for writing us and we hope it will enable us to secure some business for your account. Yours very truly."

Letter from West Michigan Flooring Company, dated August 23, 1923, to Erie Lumber Company, Erie, Pa., reading as follows:

DEFENDANTS' EXHIBIT W-18-G

"GENTLEMEN: We wish to thank you for your letter of August 15 regarding market conditions on Maple Flooring as you find them in your territory.

We have concluded to revise our prices to a lower level, the object of meeting competition and we accordingly enclose herewith our price list No. 68, the basis upon which we trust you may be able to secure your share of the business for our account.

[fol. 662] Operating conditions do not warrant these low prices as the cost of production has so far not been reduced to any extent. This condition, however, we assume will adjust itself in the course of time either as the result of a better tone to the flooring market or by a reduction in the cost of raw material entering into the manufacture of this product. Yours truly."

Letter dated August 16, 1923, from Wyman Allen Lumber Company, Boston, Mass., to West Michigan Flooring Co., Manistee, Mich., reading as follows:

[fol. 663]

DEFENDANTS' EXHIBIT W-18-G

"GENTLEMEN: Replying to your letter of the 13th relative to market conditions, your price list #67 seems to be in line with what several other Michigan Mills are asking for their stock.

Your price on 3 1/4" Clear is higher than is being quoted. We know of quotations at \$94.75 and 3 1/4" #1 at \$89.75, but there seems to be a wide range of prices.

We have heard of quotations on 2 1/4" as low as \$103.50. It does not seem to be a stable market on Hardwood Flooring. Factory has been holding firm until last week we noticed that there seemed to be some concessions in Factory grade. This, however, was more with local mills than with Michigan stock.

Flooring prices seem to have slumped considerable and we think there is a larger range of prices in Oak than in Maple. Yours truly."

Letter dated August 13, 1923, from West Michigan Flooring Company to Wyman-Allen Lumber Co., 325 Medford St., Boston, Mass., reading as follows:

DEFENDANTS' EXHIBIT W-18-I

"GENTLEMEN: In the course of following up quotations made by us on the 'Acme' Maple Flooring during the past few weeks, we have been advised in many instances of the loss of the business on account of our prices being higher than others. Our latest prices are represented in our price list No. 67, copy of which you have in your files.

It is our desire to keep in line as nearly as possible with values quoted on other reliable makes of Maple Flooring and assuming that you give us the preference on an equal basis, we would greatly appreciate an expression from you as what your experience has been in this direction. In other words if the prices we authorize you to quote do not meet competition in your market, will you frankly tell us so and we will endeavor to put you and ourselves on the right track so that business will not escape us as a result of competitors naming lower prices on a quality of product that may be somewhere the equal of ours.

These are times apparently when everyone is out hustling both tooth and nail for an order so if we may have your cooperation in this matter, we will endeavor to work with you in a manner which we hope will result profitably to both you and ourselves.

[fol. 664] An expression from you at your convenience will be appreciated and if at any time there is desirable business offered on which our authorized prices do not compete, we would suggest that you wire us at our expense just what the situation is and in which event it will receive our careful consideration. Yours truly."

Letter dated July 16, 1920, from Wyman-Allen Lumber Company, Boston, Mass., to West Michigan Flooring Company, Manistee, Mich., reading as follows:

DEFENDANTS' EXHIBIT W-19

"GENTLEMEN: We are in receipt of your price list of July 13th, also your stock sheet. We will see what we can do to secure some business for you, but we think your prices are a little higher than some others are at the present time.

Thanking you for the price and stock lists, we remain, yours truly."

Letter dated November 4, 1920, from Wyman-Allen Lumber Company, Boston, Mass., to West Michigan Lumber Company, Manistee, Mich., reading as follows:

DEFENDANTS' EXHIBIT W-19-A

"GENTLEMEN: We have a customer who is in the market for 135 M Feet of 1 x 4 13/16 x 3 1/4" #1 Maple Flooring, Dressed, Matched, End Matched, etc., to be delivered on a Boston rate of freight; time of delivery to be in January and February 1921.

Can you quote us on the whole or any part of this? Awaiting your prompt reply, we are your- truly."

[fol. 665] Letter dated November 8, 1920, from West Michigan Flooring Company, Manistee, Mich., to Wyman-Allen Lumber Co., Charlestown 29, Mass., reading as follows:

DEFENDANTS' EXHIBIT W-19-B

"GENTLEMEN: In response to your letter of Nov. 4th in which you advise that you have a customer for 135,000 ft. 13/16" x 3 1/4" No. 1, Maple Flooring. As matters now stand with us we could furnish in this item only such stock that we actually have on hand amounting to about 35,000 ft. In all probability we will not be operating our flooring plan again until February 1921.

We hardly know what to say to you with respect to price on the 35000 ft. 3 1/4" No. 1 which we now have to offer as there seems to be such a variation in values as quoted by the different manufacturers that it becomes merely a matter of guess. Our idea on this item however is a price of \$140.00 per M less \$2.00 per M commission delivered on a Boston rate of freight and if you can favor us with the business at this price and for early shipment, we will appreciate your order. If in the meantime our price does not secure the business, would you mind telling us to what extent we are out of line?

We trust you will give this matter due consideration and we shall hope to hear from you favorably at an early date. Yours very truly."

[fol. 666] Letter dated June 29, 1920, from S. W. Morrison, Wholesale Lumber, Salt Lake City, Utah, to West Michigan Flooring Company, Manistee, Mich., reading as follows:

DEFENDANTS' EXHIBIT W-19-c

"GENTLEMEN: Replying to your letter of June 24th, the adjustment on car 33133 is satisfactory.

I note you say there has been an adjustment of prices a little bit and will you revise your price list #41 sent me.

With regard to my unfilled order #58, the Eastern & Western Lumber Company say that the outlook is so very uncertain they think they had better cancel it. Business is almost at a standstill here in Salt Lake City and has been for over two months. With a strike and a lock-out the lumber yards all closed down for about a month, but have been opened up for about two weeks. None of the big work has started owing to the financial stringency, and with no new work starting it looks at the present time as though it was going to be very slow until late in the fall. For that reason the dealers are not buying anything whatever.

I look for a good trade in Idaho this fall as the crop prospects are very fine. I would like to get some of your flooring in that section, but have never been able to heretofore, as they have been able to get lower prices from someone else.

Kindly keep me posted on your lowest prices at all times. Yours very truly."

[fol. 667] Letter dated November 2, 1920, from West Michigan Flooring Company, Manistee, Mich., to Clifton F. Leatherbee, 88 Broad Street, Boston, Mass., reading as follows:

DEFENDANTS' EXHIBIT W-19-d

"DEAR SIR: In response to yours of October 29th your inquiry No. 49 for prices on Maple Flooring, we regret to advise you of our inability to quote you on the car of 2 1/4" Clear as we haven't this in stock.

We believe we have already advised you of the recent loss of our power plant by fire which necessarily closed down our flooring plant. We do have in stock in our own make of Maple Flooring the 'Acme' Brand, about 26,000 ft. 3 1/4" Clear Maple Flooring, about 32,000 ft. 3 1/4" No. 1 Maple Flooring, about 7,500 ft. 3 1/4" Clear Birch Flooring and about 3,500 ft. 3 1/4" No. 1 Birch Flooring. Our ideas of prices on 13/16" x 3 1/4" Clear both Maple and Birch delivered Boston rate is \$152.00 per M. and on the 3 1/4" No. 1, both Maple and Birch is \$142.00 per M. less \$2.00 per M. Commission and the usual 2% cash discount.

We fully realize the small demand that there now is for this product and we presume that a wide range of prices are being quoted by the various manufacturers depending upon how eager some of them are to want to move their stock. If you can favor us with an order for

the Clear and No. 1, at the prices above referred to, we shall be pleased to handle the same for our best attention and if for any reason this quotation does not get us the business, we would appreciate it very much if you would tell us to what extent we are out of line. [fol. 668] As above stated our flooring plant is now closed down and it is very likely that we will be unable to resume operations again until some time around February 1st. Yours very truly."

Letter dated November 6th, 1920, from Paul H. Knolk, Lumber, Milwaukee, Wis., to West Michigan Flooring Company, Manistee, Mich., reading as follows:

DEFENDANTS' EXHIBIT W-19-E

"GENTLEMEN:

Attention Mr. Greene

We are pleased to receive your favor of Nov. 2d, and note you will not have your plant in operation until after Feb. of next year. Also note the items you have to offer, and since Oak Flg. in 2¼" face Clear sold as low as \$125.00 per M in Milw. from Southern Mill, a price of \$125.00 per M. on Maple looks high comparatively. However if you will attach your low price on the Warehouse items you have, we will put this on our trade letter without referring to brand, if you so desire. Facy. Flg. is in large supply on the market and we are offered 2 lots of 2¼" face @ \$70 and \$75.00 deld. It seems the Mills are also forcing as much #1 on the Market also,—shipping as much as the customer will possibly stand.

The writer will indeed be pleased to see Mr. Greene, when again in Milwaukee. Would suggest at such a time as you plan a visit to Milwaukee, to advise a few days beforehand, in order to be sure the writer is in the city. Occasionally run up to the Minneapolis office. Respectfully."

[fol. 669] Letter dated November 2, 1920, from West Michigan Flooring Company, Manistee, Mich., to Paul H. Knolk, P. O. Box 748, Milwaukee, Wis., reading as follows:

DEFENDANTS' EXHIBIT W-19-F

"DEAR SIR: This acknowledges receipt of your letter of Oct. 29th with reference to Maple Flooring. We haven't yet come to any definite decision as regards the rebuilding of our power plant which was lost by fire the latter part of July. This is a matter that we expect to have settled definitely within the next ten days however in any event a new power plant cannot be installed and made ready for use much before February 1st.

We haven't anything to offer in 13/16" Clear Maple Flooring at the present time either 2" or 2¼". We do have on hand about 20,000

ft. $3\frac{3}{4}$ " Clear but we presume this particular width would not interest your trade. Below is a list of the sizes which we now have in stock in our 'Acme' Brand Maple Flooring in the widths used mostly in your territory:

- About 30,000 ft. 2" face No. 1.
- " 30,000 ft. 2" face Factory.
- " 13,000 ft. $2\frac{1}{4}$ " face Clear.
- " 12,000 ft. $2\frac{1}{4}$ " face No. 1.
- " 34,000 ft. $2\frac{1}{4}$ " face Factory.

We have had so little flooring to offer recently that we have made no particular attempt in the direction of moving it with the result that we are a little off our base so far as the present market is concerned, although we can hardly believe that a manufacturer will sell [fol. 670] his clear flooring even under present conditions at a price as low as \$125.00.

If you have any prospective customers who may be interested in any of the above items listed, we wish you would take the matter up with us and state to us frankly the very best prices which in your judgment you can secure for any or all of this stock.

When we again get into the manufacturing game we trust that it will be our pleasure to be able to do some business with you in the sale of our product. We are pretty well satisfied that our make of Maple Flooring the 'Acme' Brand will hold up its end alongside the very best makes on the market.

The writer upon his next visit to your territory will make it a point to call on you so that we may become better acquainted. Yours truly."

[fol. 671] Letter dated June 28, 1920, from West Michigan Flooring Company, to John C. Hill Lumber Company, St. Paul, Minn. reading as follows:

DEFENDANTS' EXHIBIT W-19-G

GENTLEMEN: We are enclosing herewith an inquiry which we received today from the Secretary of our Association and which we have in mind may interest you.

We wrote Mr. Hill the other day asking for his ideas as to the present market prices on Maple Flooring and not having heard from him on the subject, we are submitting herewith a list of prices which as near as we are able to determine represent the market values at the present time. We will be glad to have you check these prices over and advise if in your judgment you can make sales of the "Acme" Brand on the basis of the same, if so we will handle orders that we may be able to furnish on this basis for prompt shipment or we will apply these prices against your open price unfilled orders which we now have on our books and for which we will be glad to have shipping instructions. Yours very truly."

Letter dated June 25, 1920, from John C. Hill, Saint Paul, Minn., to Mr. W. H. Greene, Manistee, Michigan, reading as follows:

DEFENDANTS' EXHIBIT W-19-H

"MY DEAR MR. GREENE: I have been diligently trying to get at something definite regarding the market. It is a very hard matter to do. In the first place, things are very quiet and they are adopting the policy of the Dutchmen in Milwaukee, buying just as little as they can and therefore they are not as hungry as they were six [fol. 672] months ago, and as some of the mills are taking care of their orders better now, they are not anticipating their wants ahead.

I have gathered up the following information, however, which you can look over and govern yourself accordingly.

Wish that you would kindly treat this confidentially, because I may want to get you information later on, and I don't want to let them know that I am passing it on.

Harmansville claim are filling open price orders at \$185.00 for Clear; \$175.00 for #1. (This is their idea of market prices.)

Foster-Latimer & Connor claim to be getting \$200.00 for Clear; \$190.00 for #1; and \$150.00 for Factory, on new business.

L. Stephenson Company authorize new business on basis of prices Foster & O'Connor.

J. W. Wells have nothing to sell as they have strike on and not running.

Twin City Hardwood Lumber Company representatives for Cooperage Company, claim they have recently bought 1½" Clear at \$191.00; 2¼" Clear for \$186.00 and ¾ x 1½" Clear at \$155.00.

Chicago market-Factory is offered as low as \$131.50, up to \$160.00., we are trying to get \$150.00 to \$155.00, in C/L; #1 is \$185.00 and Clear is \$195.00 to \$200.00.

This information from Chicago is Nashville Hardwood Flooring Company, which account we have West of the Miss. River,—

Oak market is weak and unsettled.

Horner thinks the market is \$185.00 for Clear, \$180.00 for #1, and \$140 for Factory, is as low as it should be quoted.

With kind personal regards I am, yours very truly."

[fol. 673] Letter dated November 8, 1920, from West Michigan Flooring Company to John C. Hill Lumber Co. St. Paul, Minn., reading as follows:

DEFENDANTS' EXHIBIT W-20

GENTLEMEN: This acknowledges receipt of your letter of November 4th in which you submit a list of ten cars of Maple Flooring for which you have inquiry and in which you ask us to give you a line on the going prices on these items. To be candid with you we would not know what kind of price to put on the stock ourselves if we had the flooring for sale.

At the last meeting of the Association held on September 29th the Market Conditions Committee recommended as a fair value for 13/16" Maple Flooring of Full List for Clear, \$5.00 Off List on No. 1 and 40.00 Off List on Factory. This refers to the list of March 1st, 1920, using CJ freight for delivery to Twin Cities.

We expect there will be another meeting of the Association sometime this month although we do not know the exact date. However, in any event the Association does not have iron clad prices. Our Market Conditions Committee after analyzing stocks on hand, production, unfilled orders, new business, etc. merely recommends what in their judgment ought to be the asking price. This is merely a guide to the manufacturer and he is at liberty to quote his stock at any old price either more or less than the recommended values.

The flooring business is certainly in a demoralized condition and everybody seems to be running wild. We have reports from some of our Eastern connections to the effect that no two manufacturers are quoting within gun shot of the other and that prices are varying from \$5.00 to \$15.00 and \$20.00 on the same items. This [fol. 674] certainly is not a healthy conditions and it of course is due to the fact that there is very little demand and some mills are very anxious for business and some disregard altogether the cost of production.

The fact that we are now closed down perhaps is not as serious as it might seem and if we do not get started until the middle of the winter or until early Spring, we believe it is not going to hurt us very much when taking into consideration the general condition of things. We understand that quite a number of flooring plants in the Southern Peninsula of Michigan are already closed down and it seems to us that most all of them will have to shut up shop for the winter.

If there are developments of any importance at the next meeting of the Association, we shall be pleased to advise you. We really have no idea what the IXL and the Cooperage people are quoting today. Yours truly."

Letter dated July 22nd, 1920, from John C. Hill Lumber Company to West Michigan Flg. Company, Manistee, Michigan, reading as follows:

DEFENDANTS' EXHIBIT W-21

"DEAR SIR: Under date of July 16th we had word from Madsen and Peterson we could ship the balance of their 2¼" #1 to Kenosha but were waiting to see if we could get the big order of 80 M feet for you before informing you of this fact, thinking you wished to apply their amount on the 80 M feet if we would get it.

I guess we have lost out on it, as prices are again all shot to pieces, [fol. 675] one concern quotes 1½" Clear at \$176.00. per M Twin Cities prompt shipment,—you therefore can let the Madsen balance come ahead. Yours very truly."

Letter dated October 4, 1920, from John C. Hill Lumber Co. of Saint Paul, Minn. to Mr. W. H. Greene, Manistee, Michigan, reading as follows:

DEFENDANTS' EXHIBIT W-22

"MY DEAR MR. GREENE: I was called up from the house the other day telling me a basket of peaches had just been sent to me from you, and they happened to arrive when Sam was there (he is our vegetable man) and he said they were the nicest lot of peaches he had ever seen and I verified that when I went home, and I want to say for your own satisfaction, that is the nicest basket of peaches I have ever seen, and there wasn't a bad peach in the whole basket, and I sure do want to thank you for your consideration, and for the pleasure it has given us all in getting them, and I hope the latter part of the month, I will be able to thank you personally when you come to St. Paul.

It seems that J. W. Wells are breaking loose. They have accumulated in 2¼" Clear, #1 and factory, over half million feet, and they are out for business, making prices f.o.b. Twin Cities:

	1½"	2¼"
Clear	\$150.00	\$154.00
#1	136.00	141.00
Fact.	86.00	97.00

less our \$2.00 per M commission. It seems that they are trying to follow in the footsteps of the Honorable Henry.

Don't think you are losing any business by these prices, because there is very little that we know of that's being bought or even [fols. 676 & 677] asked for.

With kind personal regards and again thanking you for your kindness, I am, yours very truly."

Letter dated Oct. 7, 1920, from W. H. Greene to Mr. John C. Hill, c/o John C. Hill Lumber Co. St. Paul, Minn., reading as follows:

DEFENDANTS' EXHIBIT W-22½

"MY DEAR MR. HILL: I have just returned to the office after an absence of a few days and note your letters of Sept. 30th, Oct. 2nd and 4th, and I am very glad to know that the peaches which I recently shipped to you were delivered in good order. I should have written you at the time I made shipment but was very busy with other matters and had to get away on a business trip so did not get to it. I, too, thought that the peaches were especially nice and I was glad of it as I know that you and your family are fond of Michigan peaches. The fruit crop in Michigan has been very large this year and all of excellent quality.

Now with reference to your suggestion that I go to St. Paul the latter part of October. I would prefer, if it would be just the same to you, to make the trip sometime during the early part of December. Assuming that we are going to resume operations, I would like very much to be able to fix up a deal with the Thompson Yards but I do not feel that we ought to talk to them on this subject until I positively know just what we can do for them in the way of deliveries, etc. and by the early part of December if things go well, I ought to know about where I am at in this respect. Please consider this and give me your views on the subject.

I note from your letter of October 2nd that J. W. Wells Lumber [fol. 678] Company has again cut prices. The list we sent you on Oct. 1st our No. 45 we think is pretty closely in line with what most of the mills are quoting and I believe as you do that their breaking loose with prices is not going to have any material effect in increasing buying. I look for things to be very quiet until after the first of the year or at least until after election, but I do believe that building will again start up in good shape by Spring.

I would like very much to move what flooring we have in stock but I doubt if price cutting is the proper course to pursue in order to do it, however if there are live orders in sight that will fit our stock and if the question of price is involved and you will give us a line on how far we are out of the way as quoted in our list No. 45, we shall be glad to consider reasonableness concessions for prompt shipment.

With kind personal regards, I beg to remain, yours very truly."

Letter dated Jan. 17, 1920, from Adams & Kelly Co. to West Mich. Flooring Co. Manistee, Mich., reading as follows:

DEFENDANTS' EXHIBIT W-23

"GENTLEMEN: We simply must get hold of one car of 13/16 x-2 1/4 Clear Maple Flooring and one car including 20,000 feet each of 3/8 x 1, 1/2 and 3/8 x 2" Clear Maple. We do not need this right away, but must have it coming in the spring.

Please quote us on same, if you possibly can, otherwise let us know where we might get shipment. Yours truly."

[fol. 679] Letter dated Jan. 21, 1920, from West Michigan Flooring Co. to Adams & Kelly Company, Omaha, Neb., reading as follows:

DEFENDANTS' EXHIBIT 23 1/2

"GENTLEMEN: We have your letter of Jan. 17th in which you advise that you must have for spring delivery, one car of 13/16" x 2 1/4"

Clear and one car to consist of 20,000 ft. $\frac{3}{8}$ " x $1\frac{1}{2}$ " and 20,000 ft. $\frac{3}{8}$ " x 2" face Clear Maple Flooring.

We are sold ahead of our machines now on all of these items, in fact we are not quoting prices on Maple Flooring and have not been accepting any orders for the past six weeks due to our somewhat oversold condition and our desire to clean up on unfilled orders to some extent before reaching out for new business.

The market situation on lumber is such that we cannot consistently quote prices at this time for delivery in the spring, however if you can see your way clear to place your order with us for the items above referred to for shipment at our convenience as we can furnish the stock and estimated for delivery in the month of April 1920, and to be invoiced by us at the market prices in effect on the "Acme" Brand Maple Flooring at time of shipment, we shall be pleased to handle your order in this way for our best attention.

You no doubt have a fairly good idea of what the market values on this product have been during the past sixty days. To give you a line on the situation with respect to the "Acme" Brand Maple Flooring, we can say to you that the last sales we made on $13/16$ " x $2\frac{1}{4}$ " Clear would figure \$132.25 per M delivered Omaha and on the $\frac{3}{8}$ " x $1\frac{1}{2}$ " and 2" Clear @ \$105.00 per M f. o. b. Omaha.

Since we recorded these sales there have been some substantial advances in prices on rough Maple which necessarily will have its effect in prices on Maple Flooring, so that it is very fair to assume that prices will be higher than those above referred to. What extent they will be advanced for shipment so far ahead as April is something that we are unable to determine.

If you are interested in the proposition as outlined above we will welcome your order for one car each of the $\frac{3}{8}$ " and $13/16$ ". Yours very truly."

Letter dated August 6, 1923 from Oval Wood Dish Corporation to F. M. Hodges, Jones Hardwood Company, 161 Devonshire street, Boston, Mass., readings as follows:

DEFENDANTS' EXHIBIT W-24

"GENTLEMEN: Your letter of August 4 is received, and we wired you as follows:

"Will accept Newburyport order without three eighths Birch."

and now confirm.

As the writer explained to Mr. Jones, it is very difficult and expensive for us to make small lots of $\frac{3}{8}$ " Flooring and for that reason do not want to furnish any of it. However, we have the $13/16$ x $2\frac{1}{4}$ Clear Birch and the $13/16$ x $3\frac{1}{4}$ No. 1 Birch in stock and would be able to ship this at once at the prices named in your letter. Yours very truly."

Letter dated March 7th, 1923, from John S. Helfrich, Baltimore, Md. to West Michigan Flooring Co. Manistee, Michigan, reading as follows:

DEFENDANTS' EXHIBIT W-25

"GENTLEMEN: Kindly quote us price F. O. B. Baltimore, subject [fol. 681] to our usual commission of \$2.00 per M, on the following items:

39,000 ft. 13/16 x 2 1/4" face Clear Maple Flooring.

39,000 ft. 13/16 x 2 1/4" " #1 " "

39,000 ft. 13/16 x 2 1/4" " Factory " "

Shipments: 60 to 90 days, or at your convenience not later than 90 days.

We are asking a price on these difference grades because it is not definitely decided which grade of lumber will be used, but it is very possible that #1 or Factory grade will be used.

I shall be very glad indeed to have you keep me posted as to prices and conditions pertaining to orders for Maple Flooring from time to time, as there seems to be such a wide spread between the different quotations that our customers receive that they hardly know how to make a consistent estimate.

I shall also be glad to have you advise us from time to time prices on 13/16 x 2" face, in Clear, #1 and Factory. If you manufacture any Beech Flooring, kindly advise what will be the difference in price between the Clear, #1 and Factory grades in 13/16 x 2" and 2 1/4" face.

Trusting to be favored with a reply by return mail, I am Yours very truly."

[fol. 682] The foregoing letters dated in 1920, 1921 and 1923 are typical of our experience in the sale of flooring. Sometimes we would be able to meet competition and at other times not. We are continually hearing from wholesalers, representatives and other persons with respect to market conditions. The rough lumber market in 1919 and 1920 was a runaway market. Before it started we had made purchases of No. 1 Common ranging from \$30.00 to \$32.00 a thousand and No. 2 Common around \$20.00 per thousand, and before very long we were paying as high as \$85.00 a thousand for No. 1 Common and I think \$65.00 for No. 2 Common. I don't think No. 1 Common went higher than \$100.00.

We use the freight rate book gotten out by the Association exclusively as a lumber tariff. The freight rates from Manistee are practically identical to all points in the United States with those from Cadillac. There may be a few points where there is perhaps a difference of one or two cents per hundred weight, but I do not recall any point where the difference in freight rate between Manistee and Cadillac would exceed 50 cents per thousand on 13/16 maple flooring. That difference would not ordinarily affect the delivered

price of maple flooring. The average freight rate on carload lots of maple flooring from 17 producing points in Michigan and Wisconsin to 30 representative markets in the United States from Cadillac is 44.7 per cent and the average rate from Manistee is 45 cents. That difference would not affect the delivered price of flooring at all. Manistee has about 9,000 inhabitants and is located on the Pere Marquette and the Manistee & Northeastern. The Manistee & Northeastern is a short line running from Manistee to Traverse City, [fol. 683] connecting with the Pennsylvania there and connecting with the Michigan Central at Grayling. Up to a comparatively short time ago we had been more or less handicapped with respect to being able to obtain reliable information as to freight rates and for that reason we found that the rate book published by the Association was very valuable. It also served as a check against the rates quoted by our railroad offices, in which errors often occur. I understand the Association rate book is compiled by traffic experts and we have found it very reliable. We sell our flooring generally throughout the United States. The morning's mail may contain all the way from 10 to 20 inquiries from Maine to California and as far south as Louisiana.

"Q. I wish you would state what your experience was there in Manistee in attempting to get freight rates from the local agents.

A. We were considerably handicapped when we first went into the business there, back in 1907, by having no railroad office with complete sets of tariffs and files at that time. While Manistee has always been recognized as a lumber manufacturing center, the lumber produced has been hardwoods, hemlock, pine and products of that kind, which were marketed very largely in the State of Michigan. Illinois, Ohio, Indiana, Eastern Pennsylvania, some in the Western part of New York; and the railroad offices in our town were not very well equipped with freight tariffs so far as that particular market was concerned. When we went into the maple flooring business, necessitating our shipping our product to all markets, like the western markets, intermediate points in the west, we could not get that information, and very often we lost out on the business as the result of having to ask for those rates of our railroad connections. [fol. 684] and by the time the rate was quoted me very often it happened the other fellow had the business on his books."

We do not make a separate charge for freight as distinguished from the flooring when we make a delivered price on flooring. The purchaser pays the freight to the railroad company. He pays the actual freight and submits the freight bill to us, deducting the amount of the expense bill from the invoice. Our commission varies from nothing up to \$3.00 per thousand.

Q. Do you know of any rule of the present Association which attempts to prescribe the commission?

A. I do not.

Q. What were your commissions, before the present Association was organized, in previous years?

A. Well we paid at one time as low as fifty cents per thousand,

one dollar per thousand, a dollar and a half up to two dollars per thousand; in some instances, to the present time, three dollars per thousand; as the price of the product advances we advance it a little more; it costs a little more to the other fellow, with the responsibility of carrying the account, and therefore he is entitled to a little larger commission.

Q. Did you have all these variations in the rate of commission from 1907 up to the organization of the present association, that is, as to commission?

A. Oh yes.

Q. Do you know of any rule prescribed by the other Association in that regard?

A. No rule that I ever observed, that I can recall.

[fol. 685] Q. I noticed in some of these freight rate books there is some data or statement with respect to the amount of commission which shall be allowed, and so forth. Did you follow that, or other persons?

A. I don't recall that I did. I don't believe anyone ever observed it.

Our terms of sale are 2 per cent cash fifteen days, or 60 days net. They are what we call our regular terms of sale. However, we make special terms as conditions might require. We have for example the Pacific Coast trade, California trade, which I mentioned; we make terms to those people of two per cent discount upon the arrival of the car; recognizing the fact that there is a certain delay, for the privilege of unloading and examining the stock, and it requires a little more than fifteen days for that car to go across the continent and so they can't take advantage of the discount in the 15 day period, and so we make it more or less elastic in cases of that kind, [fol. 686] and we also recognize in selling through representatives who guarantee our accounts, that where we invoice to them, if their customers take their discount from their invoice a few days later than fifteen days, we recognize their right to also take that discount from our invoice, otherwise they would be the loser in the transaction."

I know of no rules of the present Association regarding terms of sale. I consider myself free to follow any rule I like and have always done so.

"Q. Now how do you determine what prices you are going to sell your flooring at?

A. Well there are several factors enter into that. I take those weekly sales reports as one of several factors, analyze those, and by writing special letters as you have just read, to my various connections throughout the country, getting information from them as to what they know about the conditions that exist in their particular markets, taking into account my own stock condition, and so forth.

Q. State whether or not you consider the information in the trade papers?

A. I can't say I pay any particular attention to that; I do sub-

scribe to the Babson's, try to study that to the best of my ability, and sort of anticipate, as it were. I don't know as I get very far with it.

Q. Do you take any construction or building reports?

A. I do not.

Q. What is your opinion as to the statistics furnished by the Association?

A. They are valuable to me, as I just stated, the weekly sales report, [fol. 687] the weekly sales report of completed transactions, I use them as one factor in arriving at the prices that I should ask for my product, or try to obtain for it, and the stock conditions reports are particularly interesting and valuable to me in enabling me to determine or outline a policy of manufacture somewhat in advance of actual operation as to the quality of flooring that I shall aim to produce in the largest quantity to take care of the particular trade at the time when that trade demands that particular kind of flooring.

Q. Illustrate what you mean by that.

A. It is generally understood in the manufacture of maple flooring, that in the process of manufacture all three of the grades, Clear, No. 1 and Factory are produced at the same time. It is also true, however, that a manufacturer can manipulate his rough lumber by putting through certain qualities of rough lumber into his plant to produce the largest percentage of any one grade at any given time.

Q. What will produce the largest percentage of Clear and No. 1?

A. Well the quality that would run largely to No. 1 common and No. 2 common, particularly No. 1 common.

Q. What will produce the largest percentage of Factory?

A. I would put in my plant 3-A and possibly straight and 3-A and B combined. I am producing that at the present time. I realize from analyzing those statistics and from other sources of information that there is a great demand for factory flooring right [fol. 688] now, and I fully realize most of the manufacturers are loaded up with orders on it, and I am putting through my plant stock No. 3-A and B which I know will produce from experience anywhere from forty to sixty percent factory grade, that is, forty to sixty percent of my total grade will represent factory. On the other hand, if I put through certain stock which I have purchased from the Louis Sands Lumber Company, which is Michigan southern maple, very high grade, running about seventy percent No. 1 Common, thirty percent No. 2, I know that particular lot of lumber when manufactured into flooring, would produce not to exceed fifteen to eighteen factory, the balance 82, 85 No. 1 Clear, therefore I avoid as much as possible the accumulation in my warehouse of Clear and No. 1 during the time this demand for factory is on. That is one of the principal benefits that I receive from those stock reports, stock conditions or stocks on hand, unfilled orders and so forth, and I consider that very valuable to me, for the reason that as a manufacturer who purchases his rough lumber on the open market it is necessary for me to purchase rather large quantities at the present time, in advance of information, and sometimes I am able to manipulate this stock from time to time to suit the market con-

ditions and may be able to turn it over quickly and get away from the congestion in the warehouse.

The Court: Do you not regard that part of the report which deals with unfilled orders of considerable importance?

[fol. 689] A. Unfilled orders; all those statistics are taken into consideration, your Honor.

Q. The unfilled orders—what feature in the report gives you an idea of what is short and so you can manipulate your rough lumber and manufacture the grade particularly in the greatest demand, that is the unfilled orders?

A. I know from looking over this report the amount of stock on hand, the amount of business booked against them, I know what unit they had oversold or undersold as the case may be.

Q. What do you do in case it is over sold or under sold?

A. I try to produce the over-sold and produce less that is under-sold.

Q. And that in your opinion is the most valuable of the statistics so far as you yourself are concerned?

A. That is the most valuable to me so far as I am concerned, yes, sir.

Q. What do you think about the re-inspection service of the Association?

A. Well the standardization, taking into account the re-inspection, is to my mind the most important work that the Association has ever been able to accomplish, particularly the re-inspection must not be overlooked, that is a very valuable feature to my mind.

Q. How does it affect you or how does it benefit you and under what circumstances?

A. The re-inspection feature has a tendency to protect the manufacturer so far as a certain type of lumber merchant being able to take advantage of him in the way of making unjust claims and demands.

Q. How about the public, wherein does it protect the public if at all? Wherein does the re-inspection service protect the public if at all, the consumer?

A. Well it protects the public indirectly by enabling the manufacturer to realize and perhaps in not writing off certain losses that would not otherwise exist if he were not held up, so to speak, by that particular type of merchant. The average cost would be higher and naturally he would have to ask more money, the way I look at it.

Q. Does it protect the honest buyer and the honest manufacturer as against the crooked dealer or crooked buyer?

A. Absolutely, yes, sir.

Q. How about the re-inspection service maintained by the Association?

A. Very thorough.

Q. Has it the confidence so far as you know, of the architects and wholesalers and buyers of the country?

A. It has so far as I know.

Q. Have you ever had occasion to have re-inspection?

A. Yes, sir.

Q. Were they uniformly found in favor, against you, or what?

A. As I recall they were in our favor in most instances at least; we haven't had more than three or four as I remember. We aim to produce a product that does not require it."

[fol. 691] Cross-examination.

By Mr. Fowler:

Q. Mr. Green, just a few questions. In determining the price at which you are going to sell your lumber you take into consideration the condition of your own stock?

A. Yes, sir.

Q. And of course those reports of yours, of your concern, tell what that condition is to all your competitors, doesn't it?

A. In a general way it does.

Q. I mean all the members of the Association.

A. It does in a general way, yes, sir.

Q. You also take into consideration the condition of your competitors' stock.

A. Not necessarily, no, not necessarily.

His warehouse conditions do not affect my condition.

Q. Do you mean to say you do not take into consideration the total amount of stock that is on hand?

A. If I am sold up on that particular item I would take it into consideration; if I am not, I wouldn't.

Q. Do you mean to say in fixing a price you do not consider the amount of maple lumber of that particular character that is in existence, to total quantity that is on the market and for sale, you don't take that into consideration?

A. I do to a degree, yes, sir.

Q. You get all that information from the members of the Association through those statistics don't you?

A. Yes, sir.

Q. Then you also take into consideration the demand for that character of maple flooring don't you?

A. Yes, sir.

[fol. 692] Q. You get that information through the Association, that is, the number of shipments and the number of sales and the quantity of sales?

A. I get those reports from the Association as a total, I don't get the individual reports.

Q. I don't care about the individual reports, but you get that information through the reports of the Association?

A. Yes, sir.

The Court: You did get individual reports didn't you up to July of this year.

A. That was sales reports, your Honor; this is stock conditions he refers to I believe.

Q. Don't the sales reports show the demand for lumber?

A. Yes, sir, to an extent, the quantity sold.

Q. Well it purports to report and show every sale does it not that is made by the members of your Association?

A. It is supposed to, those who report; there is no compulsion about reporting.

Q. But you do report?

A. Yes, sir.

Q. And other members are supposed to report?

A. Yes, sir.

Q. You also take into consideration the prices at which it is quoted in the market too, don't you?

A. That report as I——

Q. Will you answer the question?

A. That is one of the factors.

Q. You get that through the reports from the Association.

A. Yes, sir.

Q. Now aren't those the things you really consider in making up your prices, the condition of your own stock, the condition of [fol. 693] stock generally, that is, the quantity per sale, generally, the demand for lumber and the price at which it is moving, now aren't those the elements you consider in making up the price?

A. The information that I get from my representatives throughout the country is the basis upon which I make my prices.

Q. That is with reference to the demand and prices.

A. With reference to prices which I might be able to obtain for my product at different times.

Q. But these reports show exactly the prices that all your competitors who belong to the Association are getting for their lumber.

A. But those prices are not up to date.

Q. Well, within a week.

A. Great many things can happen within a week.

Q. Where is your mill located?

A. Manistee.

Q. You get yours considerably before the week is out, don't you?

A. I get—last week's reports would be delivered to me on Thursday of this week.

Q. Now in regard to your production, do you buy all of your rough lumber?

A. Yes, sir.

Q. You have no stumpage?

A. No, sir.

Q. You say you look at that report, at the various reports of production and the conditions of the stock on hand and things of that kind?

A. Yes, sir.

Q. And if you see that the market is stocked up on Clear, then you will buy in lumber that will make No. 1 and factory.

A. Yes, sir.

[fol. 694] Q. And if you see it is stocked up on No. 1 you will buy to produce more Clear and factory.

A. Well it does not—the Clear and No. 1, it isn't so easy to regulate the production of those two particular grades at it is to differentiate between the Clear and No. 1, and the factory.

Q. If you see it is stocked up on factory then of course you try to manufacture the other.

A. Yes, sir.

Q. Now if you see it is stocked up on all of these varieties, then you let up on your production, don't you?

A. No, not necessarily.

Q. Isn't it a fact now when you see it is heavily stocked up that you don't buy so freely and so abundantly?

A. I am forced to, perhaps, by warehouse conditions, my own warehouse condition in that case, I do stop.

Q. Well leaving out your warehouse, if you see the market is well stocked up and that there is no special demand for lumber, that it is not moving rapidly, don't you let up on production?

A. When I can move all my product I move it—

Q. When you see from the reports that the market is stocked up and that it is not moving rapidly, don't you let up on your purchases of raw material?

A. Yes, I perhaps do let up on my purchases on raw material, I don't purchase so far in advance perhaps.

Q. But when you see that the market is moving rapidly, that is, the market is high and the stock is moving rapidly, then you buy more liberally and put more lumber on the market.

A. Yes, sir, and if I think the market is right at the time, I buy.

[fol. 695] Q. And you get that information from the reports that come to you.

A. That is a factor, that is one factor in furnishing me that information.

Q. Well so far as stock on hand is concerned, that is about the only source of information you have got isn't it?

A. Yes, perhaps you are right about that; I guess you are.

Redirect examination.

By Mr. Johnston:

It is not possible to determine from the weekly sales reports what mill made any particular sale or to what destination any sale went. Individual manufacturers are not identified in the report, and it is not possible to tell the destination of any particular shipment or whether it moved north, east, west or south. A 27-cent rate might apply to manufacturing points in the East, West and South. All that one can tell is that a shipment took a certain rate.

"Q. When you receive those weekly reports of sales or any reports sent out by the association which show average prices received by the members of the association for a given commodity, given product, is the effect of your study and observation of those statistics as often to cause you to reduce the price as it is to advance the price; does it work both ways?

"A. If in analyzing those reports the sales show higher prices than I am obtaining I would be very apt to get in touch with my various connections throughout the different markets and ascer-

tain if they found conditions as I think they are, and if the prices are higher generally than my prices are, and my stocks or conditions are such as to warrant it, I would be very apt to advance my [fol. 696] prices. On the contrary, if those sales reports show those sales to be lower, I would obtain this same information from my connections and would reduce the prices to meet market conditions. It would work both ways."

Recross-examination.

By Mr. Fowler:

Q. Let us see about working both ways: As a matter of fact you always want to get all you can for your lumber?

A. We are in the business for that purpose.

Q. And now after you get those reports, and those reports show say that you are selling at 95 and that your competitors are selling at 90, just as long as you can get 95 you will get it won't you?

A. I presume I would, yes, sir.

Q. Yes, of course you will: never come down until you have to of course.

A. But it is fair to say——

Q. Is that true?

A. I come down to meet market conditions.

Q. You never come down until you have to, until pressure is brought to bear on you from the demand, isn't that true?

A. That is usually immediately, yes, sir.

Q. Whether it is usually immediately or not, just as long as you can get your 95 you are going to get is aren't you?

A. Yes, sir.

Q. But if you examine those reports and you are selling at 90, and they are selling at 95, you immediately are going to get your 95 if you possibly can, aren't you?

A. Not necessarily, if my stock condition does not warrant it.

Q. Not necessarily, but you are going to get it if you can, aren't you?

A. Within a period of time, yes, sir.

[fol. 697] Q. Just as quick as you can.

A. I presume so.

Q. Don't you know. You run your business that way to get all the money you can out of it.

A. Yes, sir.

Q. In regard to these present reports, when you take one of the weekly sales reports that you receive now, it is divided into groups isn't it?

A. Yes, sir.

Q. Take the Eastern and Lower Michigan mills, how many are in that group?

A. I don't recall off hand.

Q. Just four or five.

A. Something like that.

Q. And this report shows the sales that are made by each mill without naming the mill doesn't it?

A. I presume so, if I had one of those reports—

Q. That is you can tell by looking at the date on the left hand and then looking out at the freight, look at this one dated November 9, 1923 (showing witness), now the very first sale that is reported there is dated 10-16.

A. Yes, sir.

Q. And how many sales are there reported as of that date, right along in a group?

A. Four.

Q. There are four.

A. Yes, sir.

Q. And two No. 1 maple, and two clear.

A. Yes, sir.

Q. Having the same freight rate, don't they, 41 cents.

A. Yes, sir.

Q. Same commission.

A. Yes, sir.

Q. Then you know that very fellow made all those sales, you don't know which one.

A. No, I do not.

Q. But you know it is one of them.

[fol. 698] A. Fair to assume he did, yes, they were made by one manufacturer.

Q. So it is, you can run right down this list of eastern and lower Michigan mills and find that there is about ten sales on there, won't you?

A. Yes, sir.

Q. Well now aren't you familiar enough with that group of mills to know almost at once which one of the fellows did that?

A. No.

Q. Well you don't care very much about knowing which one of them, you just know those are sales made by those gentlemen in that group.

A. Yes, sir.

Q. And then you will go right on down and you find the next sales made by the Western Lower Michigan Mills, they are grouped also aren't they?

A. Yes, sir, I believe so.

Q. Yes, in the same way, and then under that, Upper Michigan Mills sales, grouped together.

A. Yes.

Q. And then next, Wisconsin mills, there are only a few in that group, is that true, four, and then next is the Chicago-St. Paul and Tupper Lake mills, that is just one mill at each place isn't it?

A. Yes, sir.

Q. So you can pick them out pretty easily.

A. They don't mean much to me at all.

Redirect examination.

By Mr. Johnston:

The 41 cent rate to which Judge Fowler called my attention might be the rate from different mills to the same point. There is no means by which I can take the freight rate and find out the destination of the shipment.

[fol. 699] JAMES E. DEWEY, being duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

I am associated with the Kneeland-Bigelow Company, which was formerly the Bigelow-Cooper Company. The Kneeland-Bigelow Company plant is located at Bay City, Michigan. We manufacture lumber and maple, beech and birch flooring. We have to buy about 50 per cent of our rough lumber on the open market. I have been connected with our company since April 1st, 1919. Our company began to manufacture flooring in January, 1916, and joined an association called the Maple Flooring Manufacturers Association I think in October, 1916. We have continued to be members of succeeding associations. We own approximately 300 million feet of stumpage in the Lower Peninsula and about 75 million feet in the Upper Peninsula, which runs about 65 or 70 per cent maple, beech and birch, of which 80 per cent is maple. I am the sales manager of our company and have been since April 1st, 1919. We sell our flooring all over the United States and have exclusive representatives located in the important markets. The largest portion of our flooring is sold in the East and Middle West because the freight rates in that territory are an advantage to us over other manufacturers. We have the shortest line into the East of any of the manufacturers. Our exclusive representatives at various points throughout the United States handle our flooring on a commission basis. In some instances they buy the stock outright and invoice the customer themselves and in other instances we invoice to the customer and allow the representatives a commission. Our commissions vary from \$1.50 to as high as \$4.00 per thousand. I know of no rule of the Association which in any wise limits members with respect to what commission shall be paid, to whom or when. I have never known of any such rule since I have been a member. We have always paid whatever commissions we pleased without objection by any members of the Association or the secretary. We get reports from our representatives with respect to market conditions in their respective territories. We send out our price lists regularly. Changes in prices depend on market conditions, but our price lists are changed possibly once a month.

"A. They are our own price lists; we send them to our representa-

tives and we send out the weekly report to our representatives showing our stock conditions, orders sold and surplus items, and very often on those reports we make certain concessions from our price lists on surplus items which we want them to move; those go out weekly, and of course we very often receive replies from our representatives upon receipt of those price lists or the weekly reports regarding conditions in their territory with reference to demand and prices, etc."

We sell retail and wholesale lumber dealers and have three salaried men who sell throughout Michigan, Ohio and Indiana. We also sell the consumers direct. I have never heard of any rule of the Association which restricts the member or which undertakes to restrict the member from selling to the consumer direct. In some instances we sell large contractors and in other instances when we receive inquiries from consumers where we have representatives we refer the inquiries to the representatives. We always protect our representatives if the inquiry comes from a market where we have one. If not, we don't hesitate to quote.

[fol 701] "Mr. Darby: If the court please, counsel has kindly consented that I may read the letter of March 7th, 1923, from John S. Helfrich, wholesale and commission lumber, Baltimore, Maryland, addressed to The West Michigan Flooring Company, which letter reads as follows:

"Kindly quote us price f. o. b. Baltimore, subject to our usual commission of \$2.00 per M, on the following items: (then the various items of flooring are given).

"We are asking a price on these different grades because it is not definitely decided which grade of lumber will be used, but it is very possible that #1 or Factory grade will be used.

"I shall be very glad indeed to have you keep me posted as to prices and conditions pertaining to orders for Maple flooring from time to time, as there seems to be such a wide spread between the different quotations that our customers receive, that they hardly know how to make a consistent estimate."

Then there is some other stuff in the letter. I would like to introduce that along with the other Greene exhibits."

JAMES E. DEWEY resumed the stand for direct examination by Mr. Darby.

I testified before that we had special representatives all over the United States. We keep in very close touch with them concerning market conditions in their respective territories. We send out a weekly statement giving our stock conditions, orders on hand, surplus items, and usually accompany the same with a letter. Our representatives answer the letter and usually give some idea of what the conditions are in their markets. We hear from our repre-

representatives regularly about once a week. In a great many instances they advise us what flooring is being offered at by other concerns, so far as they are able to ascertain, and of course if our prices are high they usually notify us. The price lists we send out are ironclad. In some instances we make concessions on certain items in this weekly statement. In others our representatives notify us that our price on a certain item would be high and we would advise them to meet competition. The concessions that we give from our price lists would be on surplus items that we desire to move so as to keep our stock well balanced. Changes in our price lists or the sending out of new price lists depend upon market conditions. Price lists are sent out practically once a month, but at no fixed times. Market changes determine when they are sent out.

The document you hand me, which has been marked Defendant's Exhibit "Y" is one of our price list forms. The prices of flooring are written under those code words such as wren, sparrow, quail, duck, etc. We use code words for telegraphic purposes.

(Exhibit Y received in evidence.)

In determining our prices on flooring, the first consideration is our costs and then we are governed entirely by market conditions, supply and demand—competition. We fix our prices according to our own discretion without regard to any rules or data furnished by the Association. When we can't sell above cost or at cost, we naturally curtail our operations. We purchase about 50% of our rough lumber from outside sources and naturally if conditions are such that prices for flooring are below cost, we no longer purchase rough lumber from others but run just enough to use up rough lumber of our own production. We have had to do this at various times. Our own situation determines this entirely. We have acted alone in this matter. I know of no agreement with any other person, firm or corporation whereby our production was to be curtailed or limited.

I am Chairman of the Cost Survey Committee and have been since it was organized in 1922. The document you hand me marked Defendant's Exhibit "Z" is a letter that I wrote to Mr. Keehn giving information regarding sales of rough lumber of which I had knowledge, or rather the document is a copy of a letter that I wrote to Mr. Keehn. The copy was taken from my file. I wrote the letter as part of my duties as Chairman of the Cost Survey Committee.

"Mr. Darby: I would like to read it to the court.

'June 2, 1922.

George W. Keehn, Secretary Maple Flooring Manufacturers Association, Chicago, Illinois:

'I believe it would be advisable to have a short meeting of my committee previous to the general meeting on June 21st, and therefore wish that you would send out notice to the members accordingly. We should have some information regarding the market price on lumber up to that date, and it might be well to appeal to the members

of the Association again, although our last effort did not avail much. The following sales are reported for week ending May 27th:

	No. 1 C	No. 2 C	No. 3 C A
1,000,000 ft. 4/4 f. o. b. cars Boyne City.....	\$45.00	30.00	22.00
435,000 ft. 4/4 f. o. b. cars Grayling.....	45.00	26.00"

[fol. 704] I had information as to those sales at the time I wrote the letter. The Cost Survey Committee have done very little as a matter of fact. Practically all they do is to gather information regarding the cost of rough lumber and transmit it to Mr. Keehn. Mr. Keehn also receives the results of test runs from members as well as the marketing and manufacturing costs. He tabulates these data and shows us the result of such tabulation. In other words, he gives us the average result of those test runs and the manufacturing and marketing costs. From such data and the price of rough lumber he arrives at the cost of manufacturing and marketing flooring. The Cost Survey Committee held not more than three separate meetings since its organization. We have had disputes from time to time. I think Mr. Dregge once objected to the cost as it was arrived at, claiming that it was too low. Dregge's company is located at Grand Rapids where labor and other costs and plant investment are high and his cost was much higher than the average cost quoted by Mr. Keehn. In arriving at the average we did not consider Mr. Dregge's costs because he was operating under peculiar conditions at Grand Rapids. His higher cost was not representative of the cost of mills in smaller communities or mills that are closer to the supply of lumber or timber.

The Cost Survey Committee does not make any report about market conditions, nor does it make recommendations of any kind. It has never done so. The only report that has ever been made is the report regarding the prices of rough lumber. Our Committee never sees the reports that are made to Mr. Keehn by different members [fol. 705] concerning test runs. Those reports are held confidential by Mr. Keehn. Mr. Keehn merely reports what is the average result of those test runs.

Our Company has made test runs from time to time. We usually take two full kilns of rough lumber—about 80,000 feet, after making a careful inspection of the lumber as to grade. We separate the rough lumber from all the other rough lumber that goes through the mill. We clean up everything ahead of it—clean out the racks of finished product so that our floors are clean of all flooring and all rough stock that has previously gone into or come out of the mill. We then put the 80,000 feet of rough lumber through the mill and keep an accurate labor cost on it and then make a tally of the stock that is produced that goes into the warehouse. We ascertain the percentage of waste from the difference between the tally of the rough lumber and the tally of the finished product. We tally each face and grade of flooring separately in order to know just what is produced. It is considerable trouble to make one of those test runs and

it cuts down our production a little because of the time and pains involved in making one. The test runs are very accurate.

We have received benefits from average manufacturing and marketing costs data that are sent out from time to time by the Secretary. We compare them with our own costs and they are valuable in that way.

I was a member of the Market Conditions Committee for a short time, I think, during 1921.

Q. At that time what did the committee do, the Market Conditions Committee?

A. As I recall it, it is rather hazy, we held meetings and went over the statistical reports of the previous month given us by the Association and analyzed them, and then the Chairman would usually make a report at the meeting of just what we found.

Q. You made a survey of conditions past and prospective?

A. Yes.

Q. Did you make recommendations?

A. No, I don't recall any recommendations were made; it was just simply a report of the conditions.

Q. At that time, and in the judgment of your committee?

A. Yes, sir.

Q. Did you consider them binding upon your own company to follow?

A. No, there was nothing binding about them.

Q. Were they binding upon anyone so far as you know?

A. Not that I know of.

Q. State whether or not each man was free to draw his own conclusions and act independently of others, or whether they were binding upon the members of the Association then in existence?

A. They were not so understood. They were the same statistics that each member received anyway. Of course, they could make their own analysis, for that matter.

Q. I believe you stated that no such forecast or comment or reports are now made or have ever been made by the Cost Survey Committee?

A. No.

[fol. 707] Our plant was originally started in 1916 with three machines, or units. We added a unit in 1918 and another unit in July of 1923. We now have five units. A unit consists of matcher and two end matchers.

I analyze the statistics that are furnished us from time to time by the Secretary of the Association so as to get as intelligent an idea as possible of the condition of the industry. These statistics throw a great deal of light on that subject. I use the statistics in the same way as I use other information regarding general conditions. I prefer light rather than darkness so far as business conditions and the conditions of the industry are concerned. We also take the Babson Service, Brookmeier's and Whaley & Eaton's, as well as several of the trade journals. We find that all of them are helpful. We do not regard the statistics sent out by the Association

as conclusive. We consider them, of course, but our own conditions are after all the controlling factor.

The most important thing to me in the weekly sales reports issued by the Secretary is the quantity that is moved, that is, the quantity of the different sizes and grades, and the total quantity. That is the important thing. I never considered that the prices shown in the [fol. 708] weekly sales report were important because they are from a week to four weeks old; that is, they are based on quotations from a week to four weeks old, and I get information with respect to prices from my own connections before I get it from the weekly sales reports. We get information with respect to prices from different parts of the country from our representatives by letter or telegram. The weekly sales reports are based on quotations from a week to four weeks old. For instance, if a quotation were made yesterday to a prospective buyer on the Pacific Coast, it may be two weeks before an order is received, if at all. Then the report of that would not go in until the following Monday. The members of the Association would not get it until the last of that week, so that the sale contained in the report would be based upon a quotation made practically four weeks before. The reports would be of much greater value if they covered all manufacturers in the United States. I have no definite knowledge, but I should say that the members of the present defendant Association manufacture between 50 and 60% of the total production of maple, beech and birch flooring in the United States.

Q. In the practical conduct of your business, would the mere fact that in one of these weekly sales reports there were certain sales made by some manufacturer, a member of the Association, at prices higher than you had been getting, necessarily and of itself result in your raising your prices?

A. From one manufacturer?

Q. Yes.

A. No, that would not affect me at all.

Q. But say there were several sales?

A. Well, as a rule those prices fluctuate, so that there are as many above me as below me.

[fol. 709] Q. I beg your pardon.

A. I say, as a rule the prices fluctuate so that there are as many above me as there are below me. You are talking about an ideal situation that would not exist.

Q. That does not exist in practical business?

A. It would not exist, no.

In determining what prices we shall charge, our condition would govern almost entirely. I mean my stock conditions, my orders on [fol. 710] hand. We have a very large output, practically fourteen million feet a year and we have difficulty in keeping that sold. It is of a great deal more importance to me to have my plant produce to full capacity at all times than it is to raise my prices every time it is possible to do so. We would lose a great deal more money if our plant were compelled to curtail its output than we would by failing to get the top of the market at all times.

Q. Has it been your observation that merely because during one week some manufacturers get higher prices, than you do, that that means permanently higher prices, or would conditions fluctuate?

A. They fluctuate, of course.

Q. One week they might be higher and one week lower, and it would be sometime before it could be determined whether the market would be at a higher or a lower level, would it not?

Q. As I say, we usually have that information long before it is reflected in those weekly reports.

The weekly sales reports received from the Secretary do not give any identifying numbers of the members making the sales. The fact that a sale is made on a BD or any other rate would not give me any information as to who made the sale or where the shipment went to. We have no means of knowing or finding out who made the sale or where the shipment went to. The Secretary of the Association does not divulge any information as to who makes the sales or where the shipment went to. We cannot tell where the shipment went to because the rate stated in the report might apply to points in any direction. There are many different points with the same rate or with the same average rate of freight.

Cross-examination.

By Mr. Fowler:

Q. You say you have been Chairman of the Cost Survey Committee ever since these new Articles of Association were agreed upon?

A. I think it is ever since then; I am not sure; it was early in [fol. 711] that year.

Q. Your Committee and Mr. Keehn make up every quarter what is supposed to be the average cost of flooring?

A. Mr. Keehn does; yes, sir.

Q. Now, what is the information that you furnish Mr. Keehn?

A. The prices on the rough lumber.

Q. Now, you use in manufacturing flooring No. 1, No. 2, No. 3 Common?

A. Yes.

Q. And you endeavor to ascertain the prices of those grades of lumber moving in the market?

A. Yes, sir.

Q. Now, I have before me a sheet entitled "Average Cost Based upon Composite Result of Five test runs" which appears to be dated November 10, 1923, less than a month ago. Now, the information that you furnish to Mr. Keehn, is that contained under "Present Average Cost of Rough Lumber, flooring lumber, f. o. b. cars, flooring mills", is that it?

A. Yes.

Q. In this instance, No. 1 Common \$57.00; No. 2 Common \$37.00; No. 3 Common A \$27.00; No. 3 Common \$20.00.

A. That is right.

[fol. 712] Q. Is that all the information you furnish Mr. Keehn?

A. That is all we furnish Mr. Keehn; yes, sir.

Q. Where did you get that information?

A. From sales made by members of the Association, from manufacturers of lumber who sold their product and gave us the information.

Q. How do you get the information from the member? That is not contained in any of those reports?

A. No, we ask the members for it.

Q. And you have the members write you personally about what they are paying for lumber?

A. Not always; sometimes we write in to Mr. Keehn.

Q. Anyway, you get it through the Association?

A. To a large extent, yes. We get it outside of the Association also.

Q. But you try to get it, one of the sources anyway is the members of the Association?

A. One source is members of the Association.

Q. And then you inquire of everybody outside of the Association that you can?

A. Yes.

Q. And then you take all these reports into consideration and average them up, I suppose, as best you can?

A. That is the idea.

Q. And then you report to Mr. Keehn what the prices of these grades of lumber are?

A. Yes, sir.

Q. Then Mr. Keehn does the rest?

A. He does the rest.

Q. He is the figurer?

[fol. 713] A. He figures it up; yes, sir.

Q. You don't stand responsible for Mr. Keehn's figuring.

A. No, sir.

Q. Now, after Mr. Keehn has figured the whole thing up, then he sends out this report. Before going into that, he bases his computation upon that and upon the results of these test runs?

A. Yes, sir; and the manufacturing and marketing cost.

Q. The test runs gives the percentage of lumber that is lost by wastage?

A. It gives the waste and the quality of flooring produced in the various sizes and grades.

Q. From what source does Mr. Keehn get the manufacturing cost?

A. He gets it from the members of the Association.

Q. Various members of the Association send in to him answers to his questionnaire that is sent out?

A. Yes, sir, quarterly.

Q. Then he takes the answers to the questionnaire and takes your report as to the price of rough lumber?

A. Yes, sir.

Q. And the test runs, and then he makes all these figures from those three bases, you might say?

A. Compiles them; yes, sir.

Q. Then he sends out this sheet which purports to show the cost of every single grade of lumber, of every dimension or grade?

A. The flooring you mean?

Q. The flooring I meant.

A. Yes, sir.

Q. In this instance, he takes clear and he says, 13/16 x 1-1/2 \$89.00; by two \$89.00; 2-1/4 \$94.00; 3-1/4 \$79.00; and four \$79.00; jointed 3-1/2 \$84.00; 3/8 x 1-1/2 and 2 inch face \$59.00. Then [fol. 714] he takes up No. 1 in the same way and factory in the same way, and distributes that among the various members of the Association?

A. Yes, sir.

Q. And so each one has before him the estimated cost of every single item of flooring that he has?

A. The average cost, yes.

[fol. 715] Our company manufactures and sells other lumber products besides flooring. I should say about 65 per cent of our product is maple. We manufacture basswood, soft elm, ash, a little oak, white pine and hemlock, besides maple, beech and birch. Whether we would reduce production of flooring because the monthly report shows that prices are not good and that there is a large supply of flooring, would depend upon our own stock conditions. We try to run at full capacity all the time. We could not turn our production into something else because our plant is designed for hardwood flooring. We run at full capacity about 85 to 90 per cent of the time and have been doing so since April 1st, 1919, except that during 1920 and 1921 we were shut down for about two months.

Q. When market conditions will permit it you run to full capacity?

A. Absolutely.

Q. When market conditions won't permit it you won't run to full capacity?

A. Well, market conditions, of course, as I say, it is our own conditions.

Q. You said awhile ago that if you see that the market is stocked up and prices are not right good, then you will quit buying maple lumber?

A. Yes.

Q. And you will produce all that you reasonably can from your own lumber? That is, all you need from your own lumber?

A. I didn't make that statement. I said that if we found that we couldn't manufacture—buy rough lumber and manufacture it at a profit we stopped buying rough lumber.

Q. You say that now, don't you?

A. Yes, sir.

[fol. 716] Q. Don't you determine that very largely from the reports that come to you from the Association?

A. We determine it entirely by the amount that we receive for our flooring on the market.

Q. So far as the condition of the market is concerned, the quantity of lumber that is on the market, don't you determine that from the reports that come to you from the Association?

A. I don't just understand you, I said that we determine——

Q. I am asking you what the fact is.

A. Well, I told you that we determine entirely by the amount we receive for our flooring.

Q. I am talking about the amount of lumber that is on the market, you don't determine that from your own conditions?

A. Are you talking about lumber or flooring?

Q. I am talking about flooring. * * * I am now talking about flooring. How do you determine what the quantity of flooring is on the market?

A. As far as the Association is concerned we can determine from their reports how much flooring there is in stock, but that doesn't represent the market by any means.

Q. Here in Michigan doesn't it represent 90 per cent of the market?

A. In Michigan, yes, but we come in competition——

Q. In Wisconsin and Michigan doesn't it represent over 80 per cent of the market?

A. We come in competition with eastern producers.

Q. In the entire United States don't it represent over 70 per cent of the market?

A. I don't believe so.

Q. You don't know?

A. No, I don't.

[fol. 717] Q. You do consult those reports, don't you?

A. Yes, indeed.

Q. And you consult those prices too, don't you?

A. On the weekly sales report?

Q. Yes.

A. Yes, I consult them.

Q. And if you find that other people are getting higher prices than you, you try to move up to them, don't you?

A. Not necessarily.

Q. Of course not necessarily, you don't have to, but don't you?

A. No, not always.

Q. Not always but you do sometimes, don't you?

A. That would depend upon my own conditions.

Q. Do you mean to say now that when you see that other people are getting more money for their flooring than you do, that you don't try to go up to it?

A. I don't believe that such a situation ever existed.

Q. Will you please answer my question?

A. I am answering it.

Q. Do you mean to say then that you always charge more than the other fellows, is that what you mean to say?

A. I always charge more than some other people.

Q. You are always charging the most that you can get, aren't you?

A. Yes, indeed.

Q. A good deal has been said here about market conditions. Will you please tell me what market conditions are?

A. Market conditions?

Q. Yes.

A. The prices that are being paid for the product, the amount of stock that is offered and the amount of stock that is required.

[fol. 718] Q. And the shipments that are being made?

A. The shipments don't make much difference.

Q. Do you mean to say that the demand for lumber and the movement of lumber in the market doesn't mean something?

A. The demand means something, yes.

Q. Isn't the demand indicated by the movement in the market?

A. No, not entirely.

Q. Not entirely, but isn't it to some extent?

A. It would not reflect the exact condition because I might be shipping on orders today that I took a year ago.

Q. Doesn't it help reflect it?

A. No.

Q. It isn't an element at all?

A. No, it isn't an element.

Q. Shipments in the market are not an element at all of the market conditions?

A. Shipments are not an element at all. It is the demand today that indicates the conditions.

Q. Isn't the demand indicated by the shipments?

A. No, because flooring is sold months ahead.

Q. You mean to swear here that the shipments of lumber, the amount of the shipments, doesn't indicate anything about the demand for lumber?

A. Not today, no, sir.

Q. Is not today a part reflection of yesterday and of last week?

A. Yes, but I am speaking of months previous. I might sell a million feet for shipment in three months from now, in three months from now there may not be any demand at all.

Q. Take your own illustration, do you mean to say that that sale for a million feet wouldn't indicate anything at all three months from now?

A. No, sir.

[fol. 719] Q. Wouldn't mean anything to you at all?

A. Not as far as the demand is concerned at that time.

Q. It wouldn't mean anything at all?

A. Why certainly not, it wouldn't mean anything.

Q. Will you please tell me why these reports lot of them go back and tell the conditions a year ago?

A. Oh, that is merely for comparison, that is all.

Q. Just for comparison?

A. That is all.

Q. It don't mean anything at all?

A. Not as far as today is concerned.

Q. Say a week ago or two weeks ago or three weeks ago, it doesn't mean anything at all?

A. Two or three weeks ago, that is a different proposition.

Q. Don't these sales reports show the shipments within a week and a half?

A. The weekly sales report—if you will give me a chance I will answer your questions. You are trying to bulldoze me.

Q. I am not trying to bulldoze you.

A. He don't give me a chance at all, your Honor.

The Court: Let us desist from this.

—, ——. A. Those weekly sales reports as I said are from a week to four weeks, based on quotations from a week to four weeks old.

A. I have a sales report here that is suppose to be issued November 9th, doesn't this sales report show shipments on November the first?

A. It shows sales on November, 1st.

Q. Sales on November the first?

A. Yes, it shows——

Q. That is eight days beforehand?

A. That is the date that that order was received in the office of [fol. 720] the company who reports it, that doesn't necessarily mean that that was the date of the quotation.

Q. That may be all so, but it shows the amount of money that the fellow got on November first, doesn't it?

A. Yes, sir.

Q. Eight days before that was sent out?

A. That is the time he received the order, yes, sir.

Q. I am talking about sales.

A. That is the sale, yes.

Q. This is a report of sales made every week and shows the amount of money that the men got at that particular time?

A. Yes.

Q. They didn't get the money then, they got it later, didn't they?

A. I presume so.

Q. Likely sold on time, have not yet received pay for it, sent out, still you don't give any attention to that at all?

A. Not much.

Q. You do some, though?

A. Oh, a little, yes.

(“The Average Cost based upon composite result of five test runs” sent out on November 10, 1923, was marked Gov. Ex. 67 and was received in evidence.)

Redirect examination.

By Mr. Darby:

The document you hand me marked Def. Exhibit AA is a report of the Association Inspector on his inspection made at our plant.

[fol. 721] “Mr. Darby: I would like to read this to the Court:

"Report of Association Inspection at Plant No. 45

Tenth Trip—May 29th

Inspection today shows your two upper grades in very good condition as to the strata, the Clear being only one point below, the number one at standard, but they are not clearly defined as to off-grade, there being some excess of that especially in the clear. The factory is abnormally high, being four points above our standard, which is plenty high. This is caused partly from the fact that you are running a good grade of lumber and partly by excessive trimming out of defects that would be allowable in this grade. This excess is in both the rough and finished strip, all of which was dis-[fol. 722] cussed with your new superintendent."

We regard the standard grades shipped by the Association as a minimum below which our grades must not fall, and not as a maximum. The rules call for lengths of from 1½ ft. and longer in No. 1. We put that grade up in 2 ft. and longer because we prefer to sell it that way and establish our product. Some members of the Association use selects and firsts and seconds rough lumber, or the entire product of the log in manufacturing flooring. If a manufacturer ships flooring that falls below the Association grades, there might be a complaint which would have to be made good in case the inspector found against the manufacturer. The probabilities are that there would be no complaint if the flooring shipped was above the standard.

CHARLES T. KERRY, being duly sworn, testified as follows:

Direct examination.

By Mr. Johnston:

I live at Saginaw, Michigan, and am in the lumber and maple flooring business. I am the president and general manager of the Kerry & Hanson Flooring Company of Grayling, Michigan. We manufacture about 6,000,000 feet a year. I give the matter of prices to be charged by our company for its flooring my personal attention. We take into consideration general market conditions, financial conditions, and the stock of flooring and amount of orders we have on hand. We read the trade papers and the various periodicals on business conditions, building reports showing the kind of buildings that are being constructed, etc., as well as the data sent out by the Secretary of the Association. Concerning reports of the secretary, the amounts of various grades of flooring on hand are all important to us so that we can regulate our output in order not to [fol. 723] get a large accumulation of flooring that is not salable. The reports help us materially along that line. The mere fact that in the weekly sales reports it appeared that a considerable number

of manufacturers were receiving somewhat higher prices for various grades of flooring than our company would not in and of itself cause us to raise our prices. We take into consideration the orders we have on hand and how soon the flooring on those orders will be required. We do not stop our production when the reports of the Association show that there is a considerable stock on hand of different grades of flooring. We shift the grade of lumber we use so as to manufacture flooring to correspond with our stock conditions and sales, but we keep on producing. We have run our plant at full capacity except in 1920 or 1921, when the shed got full and we did not care to go out and purchase any more lumber because we knew we could not move flooring. We ran as long as we could and until the shed got full. In order to get through the winter I think we shut down for about two months, when we were sure that the men could be taken care of. Grayling is a small town and we lose our men if we let them get away from us. We ran until our storage capacity was exhausted. Flooring must be kept under cover. I have never been a party to any agreement with other members of the Association to limit our production. Neither have I been a party to any agreement limiting our discretion in the matter of making prices for our flooring. The data furnished by the Association works both ways with respect to raising and lowering prices. We do not make changes every time some one else gets higher or lower prices than we do.

[fol. 724] Cross-examination.

By Mr. Fowler:

The Kerry & Hanson Flooring Company do not manufacture rough lumber. We buy from various mills around the country in the Lower Peninsula and in the Upper Peninsula of Michigan. I did have a little mill across the Straits that produced rough lumber, but I don't own it now.

Q. You were asked about what you considered in making up prices and you named a number of items, as a matter of fact, you get all of these statistics sent out by the Association?

A. Certainly.

Q. Don't you consider them?

A. Consider them in connection with other data I get, yes, sir.

Q. Don't you consider them, I am not speaking about other data, you consider them, don't you?

A. Why certainly.

Q. You are specially interested in what they show about stocks on hand, aren't you?

A. That is one thing that I look over regarding, yes, sir.

Q. You are interested in what it says about stocks on hand and you examine it with reference to that, don't you?

A. Yes, sir.

Q. And you are also interested in ascertaining whether or not there is considerable demand for flooring, aren't you?

A. I don't know as they show very much regarding the demand.

Q. Aren't you interested in it?

A. Certainly, a man is interested in whether there is a demand for his product or not.

Q. You take up these weekly sales reports, those weekly sales reports purport to report every sale that is made, don't they?

A. I don't know whether they report all of them or not, they report some sales.

[fol. 725] Q. You understand that the intention is to have every sale reported that is made by every member of the Association?

A. That is the intention, yes, sir.

Q. You examine that, don't you?

A. Why, not very much, no.

Q. Well, you examine it though, don't you?

A. Yes, I examine it sometimes, sometimes I don't see them, some weeks I don't see them at all.

Q. If those reports are correct they show the number of sales that have been made for the week ending the date that it purports to end, isn't that true, every single sale?

A. If they are all reported it shows them all; if they are not reported, it doesn't show them all.

Q. Then you can tell from that the quantity of lumber that is actually moving in the market and has moved within the last ten days, can't you?

A. No, sir.

Q. I am talking about so far as the membership is concerned, the sales don't indicate the amount of flooring that is being moved, what does indicate that?

A. The amount that is moved, the shipments.

Q. You look at the monthly report and you can tell how the shipments were at the beginning of that month, can't you—oh, you can, can't you?

A. Why you can if you look at it, yes.

Q. They are sent out for you too look at, aren't they, you know that. Now you say you determine your price by the amount of stock there is on hand, that you have got on hand and by the amount of stock there is in the market and also by the prices that lumber is bringing, don't you? Doesn't that have an effect on you? I mean flooring, when I speak of this lumber, I mean flooring.

[fol. 726] A. Why yes, those are the items, the three items we take into consideration, yes, sir.

Q. The prices at which the flooring was sold up to the end of the previous week is shown in those reports, isn't it?

A. I can't tell when the shipments are made—

Q. I am not talking about the shipments, the sales—it is shown in that report?

A. Those sales are supposed to be shown in that report, yes, sir.

Q. And you say the prices control you to some extent in making up your prices, if lumber is selling high, you sell high, don't you?

A. Naturally got to or go into bankruptcy.

Q. If lumber is bringing a high price you sell at a high price don't you?

A. Certainly.

Q. And if it is selling low naturally you will begin to drop down?

A. I would certainly have to.

Q. As a matter of fact you always get the most for your lumber that you can, don't you?

A. I undertake to; that is my intention; if I am a good salesman I do; if I am not a good salesman, I don't.

Q. That is what you are in the business for, to get all the money you can. If you see a number of other fellows are getting more for their lumber than you are getting, you will naturally try to get up to them, isn't that true?

A. You would naturally have a tendency that way, yes.

Q. Whether you have a tendency or not you as a matter of fact, do, don't you, you try to get up to them when you see they are getting more for their flooring than you are getting?

A. I take various matters into consideration.

[fol. 727] Q. The tendency is and you as a matter of fact try to get up to them, don't you?

A. I don't know as I set any one a mark to try to get up to, I will not say that I do.

Q. Just answer my question. As a matter of fact, when you see that others are getting more for their flooring than you are getting you try to get up to them?

A. When I see that lumber and all commodities of that kind are advancing I try to keep my price up to it; if I see they are going down, I try to keep them down.

Q. Don't you examine them to see what other fellows are getting for the lumber—flooring?

A. I do for the lumber and flooring both, yes, sir.

Q. When you see that your competitors, those other men, are getting more for their flooring than you are getting, then as a matter of fact you try to go up to them, don't you?

A. I try to advance with the market of the commodities I am handling, yes, sir, whether it is flooring or lumber or anything else.

Q. Some other fellows are selling lower than you and you are still getting your price for lumber, just as long as you can get that price you get it, don't you?

A. No, sir.

Q. You just voluntarily just give it to some fellow, do you?

A. No, sir. I have got some good customers who depend on me to furnish them with flooring and lumber and when the market does down I take care of them regardless of whether somebody else—to keep other people from getting my business away from me.

[fol. 728] Q. Do you mean to say that you are going to lower your prices voluntarily regardless of whether you can get a certain price for your lumber or not?

A. Not in the general market, no, sir.

Q. You have got some customers that you do *do* that for them?

A. Yes, sir.

Q. But in the general market you try to get all for your lumber that you can, don't you?

A. If a man didn't he wouldn't stay in business very long.

"Mr. Johnston: I will just hand this stipulation with reference to the witnesses who are not called——

The Court: You may read it.

Mr. Johnston: 'It is stipulated by the parties to this suit and their attorneys, that the individual defendants and the officers, representatives and agents of the corporate defendants who have not testified in this suit, would, if placed on the witness stand, testify to substantially the same effect and to similar facts and circumstances as did the witnesses De Witt, Ralston, Green, McLurg, Dewey, Saunders, Klesner, Colby, Shepeck, Kerry and Hodges, and that they would produce data and correspondence similar in character to that produced by and offered in evidence in connection with the testimony of the witnesses above mentioned.' "

[fol. 729] The depositions of George W. Keehn, M. R. Robertson, E. Bartholomew, C. A. Flanagan, A. P. Hawley, L. J. Koerble, Edwin W. Haack, A. B. Claney, Edward B. Gordon, Grant Keehn, C. L. Bert, R. H. Gillespie, C. J. Heniff, L. L. Barth, G. J. L. Janes, taken in Chicago, and the deposition of William C. McConnell, Lester N. Godfrey and William Bacon, taken in Boston; the depositions of George A. Waest, Raymond W. Storm, Paul T. Ribett, and Ralph A. Brown, taken in New York City; the depositions of Elmer A. Pfisterer, W. J. Barnett, George E. Lippencott, W. N. Lawton, taken in Philadelphia, and the depositions of Prof. Albert John Hettinger, Jr., and Prof. Homer B. Vanderblue, taken at Cambridge, Mass., were introduced and read in evidence.

Mr. Fowler: We interpose objections to the testimony of Grant Keehn, Edward B. Gordon, Professor Homer B. Vanderblue, Professor Albert John Hettinger, Jr., G. J. L. Janes and V. L. Bert as immaterial.

DEPOSITION OF L. L. BARTH, TAKEN, PURSUANT TO STIPULATION, AT CHICAGO, ILLINOIS, ON OCTOBER 23D, 1923

Said witness, being first duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

I am 73 years of age. My business is lumber and I have been engaged in that business since 1878. I am the senior vice-president of the Edward Hines Lumber Company, which has several subsidiary lumber companies. The Edward Hines Lumber Company started in business in 1891 or 1892. As Senior Vice-President I oversee the selling and buying. I am one of the original incorporators of the

Edward Hines Lumber Company and am a stockholder and director of that Company. The Edward Hines Lumber Company does a general retail and wholesale lumber business. We have retail and wholesale yards here in Chicago, besides numerous mills in Mississippi, Minnesota and other places. We have the largest lumber yard [fol. 730] in the world here in Chicago. It is located on Lincoln Street and Blue Island Avenue. In that one yard we handle about 300,000,000 feet a year. All told, both directly and indirectly, the Edward Hines Lumber Company handles about a billion feet of lumber of all kinds annually. The buying is done in Chicago under my supervision. The Edward Hines Lumber Company do not manufacture maple, beech or birch flooring except a little at Park Falls for our own consumption there. The Edward Hines Lumber Company has never at any time been a member of any Association named the Maple Flooring Manufacturers Association. The Edward Hines Lumber Company handles in its Chicago yards from three to five million feet of maple, beech and birch flooring annually. The Edward Hines Lumber Company ship its products all over the United States and also have a large export business. We have done business at one time or another with Bigelow-Cooper Company, the East Jordan Lumber Company, Flanner-Steger; Holt Hardwood Company, William Horner, North Branch Flooring Company, I. Stephenson Company, J. W. Wells Lumber Company, Wisconsin Land & Lumber Company, W. D. Young & Company, T. Wilce Company, and other members of the different manufacturers flooring associations, besides those named, but I have named the principal ones, including the Foster-Latimer Company and Mitchell Bros. We may have had quotations from all the different maple flooring manufacturers. In the conduct of our business we keep in touch with market conditions and the price of maple, beech and birch flooring by means of sending out inquiries addressed to practically all manufacturers of maple flooring. The representatives of such manufacturers in Chicago also call us up and we get information from them. Also from conversations had with other lumbermen in Chicago with respect to what they are paying, etc. We also receive from time to time price lists from the different manufacturers of maple, beech and birch flooring. [fol. 731] Such competition has at all times been active and vigorous. I know that there has been such competition because customers who have come to us not only have told us, but have showed us what other people's prices were and have inquired whether we could meet that competition. Sometimes we have been able to and sometimes we have not. We have at all times endeavored to buy maple, beech and birch flooring as cheap as possible, provided the quality was what we wanted. If a manufacturer produced a quality equally as good as other manufacturers, why we would buy at the lowest price, but if the manufacturer was a small fellow and his grades were uncertain, we would not consider his price at all. In other words, we prefer to buy from a responsible manufacturer whose quality is good, even though we might have to pay a somewhat higher price. The matter of deliveries would also enter into consideration in determining from whom we should buy. I consider that it is to our in-

terests as a buyer that there should be free and full competition among the manufacturers of maple, beech and birch flooring, and that is what I am in favor of. If a person were to tell me that during all the time since 1895 or any part thereof there had been no competition among the manufacturers of maple, beech and birch flooring, and that by various devices said manufacturers and their confederates had established and maintained a practical uniformity of f. o. b. mill and delivered prices of maple, beech and birch flooring, I would say that he did not know what he was talking about. I do not think that a man that has had any experience in the lumber business would make such a statement. He might know something about the lumber business, but his experience would be very limited. I have never suspected that I was being victimized in the [fol. 732] manner charged by the Federal Government in its petition in this case. From my knowledge of the lumber business and talks with other yard men, I can say that all yard men in Chicago feel that there has always been competition among the manufacturers of maple, beech and birch flooring. I have never observed any uniformity, whether practical or otherwise, in the prices for maple, beech and birch flooring by the different manufacturers. There might be a case or two where on one item they might be the same, but as a general proposition no. The prices have always varied and that variation has been pretty substantial in many cases. From my knowledge of the lumber business I can say that the variation or difference in prices of the different manufacturers of maple, beech and birch flooring has been as great as the variation in prices of the other lumber products that I buy. If there had been a practical uniformity of prices, or if the prices of maple, beech and birch flooring had been artificially regulated and controlled by a group of manufacturers, I do not think that such a condition could exist 24 hours before I would become aware of it. This for the reason that we are buying every day and we would immediately learn of any uniformity of price. I do not think there was ever a time during my extended experience when all the quotations that we received were all the same. There has never been a time when they were practically uniform. From my experience I would say that the prices of maple, beech and birch flooring in Chicago have been governed by the law of supply and demand, and that such prices have not been artificially manipulated and fixed by some group of manufacturers. This information is based upon my experience in the purchase and sale of from three to five million feet of maple, beech and birch flooring annually. I believe that there is now and has always been free, active and vigorous competition among the different manufacturers of maple, beech and birch flooring. The papers you hand me which have been marked Defendants' Barth Ex. 1 for identification are an inquiry dated September 15, 1922, that was sent out by the Edward Hines Lumber Company for 15,000 feet 13/16ths by 1 1/2 inch fact Clear maple flooring, and also for a car of 13/16th by 2 1/4 inch face clear maple flooring, addressed generally to manufacturers of maple, beech and birch flooring, and the answers of different manufacturers who quoted on said inquiry. Said quotations received

by us on the 15,000 feet of 13/16 by inch and a half clear maple flooring were as follows:

Nichols & Cox, \$85.50 less \$2.00 commission.
 J. W. Wells Lumber Co., \$87.50, less \$2.00 commission.
 Wisconsin Land & Lumber Co., \$102.25.
 Kerry & Hanson Lumber Co., \$85.00, less \$2.00 commission.
 Below Lumber Co., Marinette, Wis., \$87.50.
 Beck Lumber Co., \$89.75.
 I. Stephenson trustees, \$92.75.
 Strable Lumber & Salt Co., \$94.50, less \$2.00 commission.
 W. D. Young & Co., \$92.50, less \$2.00 commission.

The prices above mentioned were F. O. B. cars Chicago. I think that we buy about 95 per cent of our flooring f. o. b. cars Chicago. This enables us to know in advance what the flooring is going to cost us here and we prefer that the manufacturers accept the risks incident to transportation.

EXTRACTS FROM BARTH'S EXHIBITS 2-22, ETC.

The documents you hand me marked Defendants' Barth Exhibit 2 for identification are an inquiry of the Edward Hines Lumber Company, dated January 30th, 1923, for a car of 13/16th by 3-1/4 inch face clear maple flooring, 7 to 14 feet long, and the quotations that we received in response to said inquiry. Said quotations were as [fol. 734] follows:

William Horner, \$108.00.
 Kneeland-Bigelow Lumber Co., \$129.50.

Defendants' Barth, Exhibit 3 for identification, is an inquiry sent out by the Edward Hines Lumber Company, on July 28th, 1922, for 175,000 feet of 13/16th by 2-1/4 inch clear and No. 1 maple flooring, shipments to be made in six months together with the quotations received from manufacturers. Said quotations were as follows, for the Clear:

Ward Bros., \$96.25.
 Cummer-Diggins, \$97.00.
 Horner, \$97.75, less \$2.00 commission.
 I. Stephenson, \$97.75.
 J. W. Wells Lumber Co., \$95.00 f. o. b. cars Menominee. The freight from Chicago to Menominee would be \$2.50 per thousand.
 Kerry & Hanson Lumber Co., \$99.50 less \$2.00 commission.
 Northwestern Cooperage & Lumber Co., \$94.75.
 Flanner & Steger Land & Lumber Co., \$97.75.
 Strable Lumber & Salt Co., \$99.75, less \$2.00 commission.

The quotations received on the No. 1 were as follows:

Ward Bros., \$86.25.
 William Horner, \$87.75.
 I. Stephenson, \$87.75.

Kerry & Hanson Lumber Co., \$89.50, less \$2.00 commission.
 Northwestern Cooperage & Lumber Co., \$84.75.
 Flanner & Steger Land & Lumber Co., \$82.75.

The documents marked Defendants' Barth Exhibit 4 for identification are an inquiry of the Edward Hines Lumber Company, dated November 8th, 1922, for prices on 400,000 feet of 13/16th by 2 inch face clear maple flooring and the quotations received are as follows:

William Horner, \$89.00, less \$2.00 commission.
 Ward Bros., \$92.50.
 W. D. Young & Co., 94.00, less \$2.00 commission.
 Bigelow-Cooper Co., 94.00, less \$2.00 commission.
 Flanner-Steger Land & Lumber Co., \$89.00.
 Kerry & Way, 94.00, less \$2.00 commission.
 West Michigan Flooring Company, \$94.50.

That inquiry was sent out by us in order to bid on one section [fol. 735] of the Illinois Merchants National Bank Building now under construction.

The documents you hand me marked Defendants' Barth Exhibit 5 for identification, are an inquiry sent out by the Edward Hines Lumber Company on July 14th, 1922, for five cars of 13/16th by 2 1/4 inch face Clear, No. 1 and Factory flooring, and the quotations that we received, said quotations being as follows:

On the Clear:

Ward Bros., \$92.75.
 I. Stephenson, 95.25.
 William Horner, 94.75, less \$2.00 commission.
 Robbins Flooring Co., 91.50.
 Wisconsin Land & Lbr. Co., 99.75.
 Bigelow-Cooper Co., 99.75, less \$2.00 commission.
 Northwestern Cooperage & Lumber Co., \$94.75, less \$1.50 commission.
 R. Connor Co., \$101.00.
 Strable Lumber & Salt Co., 94.75, less \$2.00 commission.

The quotations that we received on the No. 1 flooring were as follows:

Ward Bros., \$82.75.
 I. Stephenson, 82.50.
 William Horner, 84.75, less \$2.00 commission.
 Robbins Flooring Co., 75.00.
 Wisconsin Land & Lumber Co., 89.75.
 Bigelow-Cooper Co., 84.75, less \$2.00 commission.
 Northwestern Cooperage & Lumber Co., \$84.75, less \$1.50 com'n.
 Strable Lumber & Salt Co., 84.75, less \$2.00 commission.

The quotations on the factory were as follows:

Ward Bros., \$31.75.
 North Branch Flooring Co., 30.00.
 I. Stephenson, 37.75.
 Wm. Horner, 35.00, less \$2.00 commission.
 Robbins Flooring Co., 31.50.
 Wisconsin Land & Lbr. Co., 39.75.
 J. W. Wells Lumber Co., 32.50.
 Foster-Latimer Lumber Co., 32.75.
 Bigelow-Cooper Co., 34.75, less \$2.00 commission.
 Northwestern Cooperage & Lumber Co., 34.50, less \$1.50 commission.

[fol. 736] The documents you hand me marked Defendants' Barth Exhibit 6 for identification, are an inquiry of Edward Hines Lumber Company, of November 10, 1922, for two cars of 13/16th by 2-1/4 inch factory maple flooring, and the quotations that we received in response to said inquiry. Said quotations were as follows:

West Michigan Flooring Co., \$44.50.
 Strable Lbr. & Salt Co., 44.50, less \$2.00 commission.
 W. D. Young & Co., 44.00, less \$2.00 commission.
 Kerry & Way, 44.00, less \$2.00 commission.
 Flanner-Steger Land & Lumber Co., 42.00.
 Northwestern Cooperage & Lumber Co., 41.50.
 I. Stephenson, 42.00.
 Foster-Latimer Lbr. Co., 37.50.
 Bigelow-Cooper Co., 41.00.

The documents you hand me marked Defendants' Barth Exhibit 7 for identification are an inquiry of the Edward Hines Lumber Co., dated January 13, 1923, for 13/16ths by 2-1/4 inch Factory maple flooring f. o. b. cars Plymouth, Wisconsin, and the quotations that were received in response thereto. Said quotations are as follows:

Northwestern Cooperage & Lumber Co., \$41.00.
 Kerry & Hanson Flooring Co., 42.50.
 Holt Hardwood Co., 42.00.
 Foster & Latimer Lumber Co., 42.50.
 I. Stephenson Co., 43.00.
 Ward Bros., 43.25.
 J. W. Wells Lumber Co., 42.50.
 William Horner, 40.50.
 Kerry & Way, 42.50.
 Kneeland-Bigelow Lumber Co., 42.50.
 Flanner-Steger Land & Lumber Co., 42.50.
 W. D. Young & Co., 50.25.

At the same time we made an inquiry for 13/16th by 2-1/4 inch clear, 13/16th by 2-1/4 inch No. 1 f. o. b. cars, Logan, Utah. The quotations that we received on the clear were as follows:

[fol. 737] Holt Hardwood Co., \$114.50.
 William Horner, \$109.00.
 Flanner-Steger Land & Lumber Co., 114.50.

The quotations received on the No. 1 were as follows:

Holt Hardwood Co., \$104.50.
 William Horner, 99.00.
 Flanner-Steger Land & Lumber Co., 104.50.

The documents you hand me marked Defendants' Barth Exhibit 8 for identification, are an inquiry of the Edward Hines Lumber Co., dated January 6, 1923, for 13/16th by 2¼ inch clear, No. 1 and Factory maple flooring f. o. b. cars Chicago, and the quotations received in response thereto. The quotations on the Clear were as follows:

R. Connor Company, \$99.50.
 Foster-Latimer Lumber Co., 99.50, less \$2.00 commission.
 Holt Hardwood Company, 104.50, less \$2.00 commission.
 Ward Bros., 97.25.
 Kneeland-Bigelow Lumber Co., 99.00, less \$2.00 commission.
 West Michigan Flooring Co., 98.50.
 Flanner-Steger Land & Lumber Co., 97.00.
 Strable Lumber & Salt Co., 99.50.

The quotations that we received on the No. 1 were as follows:

R. Connor Company, \$89.50.
 Foster-Latimer Lumber Co., 89.50, less \$2.00 commission.
 Holt Hardwood Co., 94.50, less \$2.00 commission.
 Ward Bros., 87.25.
 Kneeland-Bigelow Lumber Co., 89.00, less \$2.00 commission.
 West Michigan Flooring Co., 88.50.
 Flanner-Steger Land & Lumber Co., 87.00.
 Strable Lumber & Salt Co., 89.50.

The quotations that were received on the Factory flooring were as follows:

[fol. 738] R. Conner Company, \$44.50.
 Foster-Latimer Lumber Co., 44.50, less \$2.00 commission.
 Holt Hardwood Company, 44.50, less \$2.00 commission.
 Ward Bros., \$42.25.
 Kneeland-Bigelow, 44.00, less \$2.00 commission.
 West Michigan Flooring Co., 43.50.
 Flanner-Steger Land & Lumber Co., 41.00.
 Strable Lumber & Salt Co., 44.50.

Mr. Darby: I should like to read into the record from the letter of Ward Brothers of date January 9th, 1923, making the quotations that Mr. Barth has read into the record, the following words:

"We appreciate receiving this opportunity to quote you, and trust that you may decide to favor us with the business. Our flooring is manufactured strictly in accordance with MFMA rules, and we are confident that the quality would please your trade."

The letters "M. F. M. A." as used in the foregoing excerpt from the letter from Ward Brothers stand for Maple Flooring Manufacturers' Association, said letter being part of Defendants' Barth Exhibit 8 for identification.

The documents you hand me marked Defendants' Barth Exhibit No. 9 for identification in an inquiry of the Edward Hines Lumber Company, sent out on December 6th, 1922 for 13/16th by 2¼ inch face Clear, and factory maple flooring f. o. b. cars Chicago and the quotations that were received in response thereto. The quotations that were received on the Clear were as follows:

R. Connor Company, \$99.00.
Foster-Latimer Lumber Co., 99.50, less \$2.00 commission.
William Horner, 99.50, less \$2.00 commission.

The quotations received on the Factory were as follows:

[fol. 739] R. Connor Company, \$42.00.
Foster-Latimer Lumber Co., 39.50, less \$2.00 commission.
William Horner, 39.00, less \$2.00 commission.

The documents you hand me marked Defendants' Barth Exhibit 10 for identification, are an inquiry sent out by the Edward Hines Lumber Company, March 26th, 1923, for 25,000 feet of 13/16th by 3½ inch jointed Factory maple flooring and the quotations that were received from different manufacturers in response thereto. The quotations that we received were as follows:

Kneeland-Bigelow, \$62.50, less \$2.00 commission.
Holt Hardwood Company, 63.00.
W. D. Young & Co., 64.50, less \$2.00 commission.
J. W. Wells Lumber Co., 64.50.

The documents marked Defendants' Barth Exhibit 11 for identification are an inquiry of Edward Hines Lumber Company, dated November 28th, 1922, for 800,000 feet of 13/16th by 2 inch face Clear maple flooring and the quotations received in response thereto. Said quotations are as follows:

Ward Brothers quoted on 150,000 feet at \$90.00.
Bigelow-Cooper quoted on 150,000 feet at \$94.00, less \$2.00 commission.
W. D. Young & Co., quoted on 200,000 feet at \$94.00, less \$2.00 commission.

The documents marked Defendants' Barth Exhibit 12 for identification are an inquiry of the Edward Hines Lumber Company dated

November 16th, 1922, for two cars of 13/16ths by 2¼ inch Factory maple flooring and the quotations received in response thereto. Said quotations are as follows:

Wisconsin Land & Lumber Co., \$39.00.

Kerry & Way, 44.00, less \$2.00 commission.

[fol. 740] The documents marked Defendants' Barth Exhibit 13 for identification are an inquiry of the Edward Hines Lumber Company, dated May 24th, 1923, for the delivery at Boyd, Iowa, of 13/16th by 2¼ inch Clear maple flooring and 13/16th by 1½ inch clear maple flooring, and the quotations received in response thereto. The quotations received on the 13/16th inch by 2¼ inch Clear maple flooring were as follows:

Foster-Latimer Lumber Co., \$117.00, less \$2.00 commission.

Wisconsin Land & Lumber Co., 117.00, less \$2.00 commission.

J. W. Wells Lumber Co., 110.00, less \$2.00 commission.

Northwestern Cooperage & Lumber Co., 112.00.

The quotations received on the 13/16th by 1½ inch clear flooring were as follows:

Foster-Latimer Lumber Co., \$107.00, less \$2.00 commission.

Wisconsin Land & Lumber Co., 107.00.

J. W. Wells Lumber Co., 100.00, less \$2.00 commission.

The document marked Defendants' Barth Exhibit 14 for identification are an inquiry of the Edward Hines Lumber Company, dated December 6, 1922, for 13/16ths by 2¼ inch face Clear and Factory maple flooring and the quotations that were received in response thereto. The quotations received on the Clear were as follows:

Cummer-Diggins Company, \$99.00, less \$2.00 commission.

Kerry & Way, 99.00, less \$2.00 commission.

Ward Brothers, 97.25.

J. W. Wells Lumber Co., 99.00, less \$2.00 commission.

West Michigan Flooring Co., 99.00.

Robbins Flooring Co., 95.00.

Strable Lumber & Salt Co., 99.50, less \$2.00 commission.

Holt Hardware Co., 94.50, less \$2.00 commission.

[fol. 741] The quotations received on the Factory were as follows:

Cummer-Diggins Co., \$45.00, less \$2.00 commission.

Kerry & Way, 44.00, less \$2.00 commission.

Ward Brothers, 42.25.

J. W. Wells Lumber Co., 44.00, less \$2.00 commission.

West Michigan Flooring Co., 44.00.

Robbins Flooring Co., 40.00.

Strable Lumber & Salt Co., 44.50, less \$2.00 commission.

Holt Hardware Co., 44.60, less \$2.00 commission.

The documents you hand me marked Defendants' Barth Exhibit 15 for identification, are an inquiry of the Edward Hines Lumber Company, dated November 21, 1922, for 25,000 feet of 13/16th by inch and a half, 2 inch and 2¼ inch Clear maple flooring, 6 feet and up, and the quotations received in response thereto. The quotations received were as follows:

On the 1½ inch:

William Horner, \$97.00, less \$2.00 commission.

Strable Lumber & Salt Co., 97.50, less \$2.00 commission.

The quotation we received on the 2 inch face was made by William Horner at \$100.00, less \$2.00 commission.

The quotations that we received on the 2¼ inch face were as follows:

William Horner, \$105.00, less \$2.00 commission.

W. D. Young & Co., \$106.00, less \$2.00 commission.

The documents you hand me marked Defendant's Barth Exhibit 16 for identification are an inquiry of the Edward Hines Lumber Company, dated September 15th, 1922, for 13/16th by 1½ inch and 2¼ inch clear maple flooring, and the quotations that were received in response thereto. The quotations received on the 1½ [fol. 742] inch face were as follows:

Holt Hardwood Company, \$89.75, less \$2.00 commission.

William Horner, 89.00, less \$2.00 commission.

Ward Brothers, 86.75.

Nichols & Cox Lumber Co., 85.50, less \$2.00 commission.

R. Connor Company, 94.75.

Bigelow-Cooper Co., 89.50, less \$2.00 commission.

Beck Lumber Company, 90.00.

The quotations received on the 2¼ inch clear were as follows:

Holt Hardwood Company, \$99.75, less \$2.00 commission.

William Horner, 99.50, less \$2.00 commission.

Ward Brothers, 99.75.

Nichols & Cox, 99.50, less \$2.00 commission.

R. Connor Company, 99.75.

Bigelow-Cooper, 99.75, less \$2.00 commission.

The documents handed me marked Defendants' Barth Exhibit 17 for identification are an inquiry of the Edward Hines Lumber Company, dated February 16th, 1923, for one car of 13/16ths by 3¼ inch face factory maple flooring delivered at Auburn, New York, and the quotations received in response thereto. The said quotations are as follows:

William Horner, \$55.50, less \$2.00 commission.

J. W. Wells Lumber Company, \$57.50, less \$2.00 commission.

The documents you hand me marked Defendants' Barth Exhibit 18 for identification are an inquiry of the Edward Hines Lumber Company, dated March 14th, 1923, for 50,000 feet of 13/16th by 2¼ inch face factory maple flooring and the quotations received in response thereto. Said quotations are as follows:

[fol. 743] William Horner, \$55.00, less \$2.00 commission.

Ward Brothers, 54.25.

Flanner-Steger Land & Lumber Co., \$54.00.

The documents you hand me marked Defendants' Barth Exhibit 19 for identification are an inquiry of the Edward Hines Lumber Company, dated May 16th, 1923, for one car each of 13/16th by 2¼" Factory, clear and No. 1 Flooring and the quotations received in response thereto. Said quotations on the factory were as follows:

Flanner-Steger Land & Lumber Co., \$54.00, less \$1.00 commission.

Kneeland-Bigelow, 59.00, less \$2.00 commission.

W. D. Young & Co., 59.00, less \$2.00 commission.

Foster-Latimer Lumber Co., 59.00, less \$2.00 commission.

Ward Brothers, 57.25.

Indiana Flooring Co., 61.00, less \$2.00 commission.

The quotations received on the Clear were as follows:

Kneeland-Bigelow, \$109.00, less \$2.00 commission.

W. D. Young & Co., 114.00, less \$2.00 commission.

Foster-Latimer Lumber Co., 114.00, less \$2.00 commission.

Ward Brothers, 109.25.

I. Stephenson, 113.00.

Indiana Flooring Co., 114.00, less \$2.00 commission.

The quotations received on the No. 1 were as follows:

Kneeland-Bigelow, \$99.00, less \$2.00 commission.

W. D. Young & Co., 104.00, less \$2.00 commission.

Nichols & Co., 99.00, less \$2.00 commission.

Foster & Latimer Lumber Co, 104.00, less \$2.00 commission.

Ward Brothers, 99.25.

I. Stephenson Company, 98.50.

Wisconsin Land & Lumber Co., 99.00, less \$1.50 commission.

Indiana Flooring Co., 104.00, less \$200 commission.

[fol. 744] The documents you hand me marked Defendants' Barth Exhibit 20 for identification are an inquiry of the Edward Hines Lumber Company, dated September 5th, 1922, for one car load of 13/16th by 3¼ inch factory maple flooring and the quotations that were received in response thereto. Said quotations are as follows:

J. W. Wells Lumber Co., \$39.00, less \$2.00 commission.

W. D. Young & Co., 45.00, less \$2.00 commission.

At the same time we also made an inquiry for 13/16ths by 2¼ inch factory maple flooring. Said quotations that we received were as follows:

Bigelow-Cooper, \$45.00, less \$2.00 commission.

Holt Hardware Co., 37.75, less \$2.00 commission.

Defendants' Barth Exhibit 21 for identification are an inquiry sent out by the Edward Hines Lumber Company on April 28th, 1923, for one car of inch and 16th by 2¼ inch face No. 1 Maple flooring delivered at Pittsburgh, Pennsylvania, and the quotations received in response thereto. Said quotations are as follows:

Kneeland-Bigelow, \$105.00, less \$2.00 commission.

Holt Hardwood Company, 100.50, less \$2.00 commission.

The documents you hand me marked Defendants' Barth Exhibit 22 for identification are an inquiry of the Edward Hines Lumber Company, sent out on April 3d, 1923, for five cars of flooring and the quotations received in response thereto. One of the inquiries related to 13/16th by 2¼ inch No. 1 Maple Flooring delivered at Chicago, and the quotations received with respect to such flooring were as follows:

[fol. 745] Holt Hardwood Company, on 5 cars, \$94.00, less \$2.00 commission.

Holt Hardwood Company, on 5,723 feet, \$94.50.

The inquiry also related to 13/16th by 2-¼ inch Factory Maple Flooring and the quotations received were as follows:

Holt Hardwood Company, on two cars, \$54.50, less \$2.00 commission.

J. W. Wells Lumber Company, \$59.00.

Ward Brothers, on two cars, \$59.25.

The documents marked Defendants' Barth Exhibit 23 for identification are an inquiry of the Edward Hines Lumber Company, dated April 12th, 1923, for 300,000 feet of 13/16th by 2-¼ inch face Clear maple flooring for a building now under construction in the Loop, at Chicago, and the quotations received in response thereto. That letter was addressed to R. Connor Company, Cummer-Diggins Company, Flanner-Steger Land & Lumber Company, Foster-Latimer Company, Holt Hardwood Company, William Horner, Kerry & Hanson Flooring Company, Kerry & Way Lumber & Manufacturing Company, Kneeland & McLurg, Nichols & Cox, Northwestern Cooperage Company, Strable Lumber & Salt Company, Ward Brothers, J. W. Wells Lumber Company, Wisconsin Land & Lumber Company, and the West Michigan Flooring Company. The documents attached to said inquiry are letters that were received in response thereto.

Mr. Darby: I should like to read into the record brief excerpts from some of these letters.

(Mr. Darby read the following.)

(On Letterhead of West Michigan Flooring Co.):

"Menominee, Mich., April 14, 1923.

Edward Hines Lumber Co., Lincoln St. South of Blue Island Ave., Chicago, Ill.

GENTLEMEN:

Attention Mr. J. H. Vanlandingham

[fol. 746] We have yours of the 13th inst. your request for price on 300M ' 13/16" x 2 1/4" face Clear Maple Flooring for shipment late this year. It develops that we are in an oversold condition on this item at the present time and in view of the lumber market as it exists today, we are not quoting our product for shipment very far ahead. We, under the circumstances, are not prepared to figure with you.

Yours truly, West Michigan Flooring Co., per Grone. WGH-GN."

(On Letterhead of J. W. Wells Lumber Company:)

"Menominee, Mich., April 14, 1923.

Edward Hines Lumber Co., Chicago, Ill.

GENTLEMEN:

Mr. Vanlandingham

We thank you for your inquiry of the 12th but regret that we are unable to quote you on the 200 M ft. of 13/16ths Face Clear Maple Flooring called for as we are so far oversold.

Yours very truly, J. W. Wells Lumber Company. CHL-MK."

(On Letterhead of W. D. Young & Company:)

"Bay City, Mich., Apr. 14, 1923.

Edward Hines Lumber Co., Chicago, Ill.

GENTLEMEN: Your favor of the 13th was received and contents noted. We are always pleased to receive orders from the Edw. Hines Lumber Co., but we do not feel like quoting on any Maple Flooring for delivery during the latter part of this year. We are over sold at the present time on almost all items.

We thank you very much for the inquiry, but don't believe we better quote a price.

Yours very truly, W. D. Young & Co. Ehedon. BPW-KAW."

[fol. 747] (On Letterhead of Wisconsin Land & Lumber Co.):

"Hermansville, Michigan, 4-14/23.

Edward Hines Lumber Co., Chicago, Ill.

GENTLEMEN: In reply to your favor of the 12th, we would be perfectly willing to protect you on the price for fall delivery on the 300,000' of 13/16th x 2¼" Clear Maple Flooring at \$109.00, but on the other hand, it seems like quite a quantity to tie up to because no doubt when you want this you will want it all at once and we may not have it on hand. We would be willing to take on a part of it.

Thanking you very kindly for the inquiry, we are,

Yours truly, Wisconsin Land & Lumber Co. H. A. Fry,
Sales Dept."

(On Letterhead of Holt Hardwood Company:)

"Oconto, Wis., April 16th, 1923.

Edward Hines Lumber Company, Chicago, Ill.

GENTLEMEN:

Attn. J. H. Vanlandingham

We have your letter of April 13th, and note that you have an order for approximately 300,000 feet of 2¼" face Clear Maple Flooring, to be used late this year.

There is no use in going into the question of what the market will be next fall or winter. We do not care to gamble on a proposition of this kind. Maple lumber is very scarce at present and we doubt very much there being any surplus this year, but we got a very responsible manufacturer, in fact, the largest manufacturer of Maple lumber in the north, to make us a price of a million feet of flooring stock for delivery October 1st, which would enable us to handle your order for Clear Flooring, but we would have to have \$107.50 per thousand, net, delivered Chicago. We have an option on the lumber extending through this week as we explained to them that we wished to take the matter up with you in regard to the flooring and would have to have time to hear from you before we could decide whether or not we would want the lumber. If we [fol. 748] take the order, of course, we will make delivery regardless whether the price of flooring is \$90.00 or \$150.00 at the time you want delivery, and we would expect you to take the stock.

Very truly yours, Holt Hardwood Company. W. L. De Witt."

(On letterhead of Kneeland-Bigelow Company:)

"Bay City, Michigan, April 14, 1923.

Edw. Hines Lumber Co., Chicago, Ill.

GENTLEMEN:

Attn. Mr. J. H. Vanlandingham

In response to your favor of the 13th inst. with reference to your order for 300,000 feet of 13/16 x 2 1/4 face Clear Maple Flooring, we would be willing to accept this order on a basis of our list price providing a definite date of shipment is specified, which would not be too far in the future.

If you will advise us of the earliest time of shipment which your customer will accept, we will give you a prompt decision.

We thank you for your offer and await your further advice.

Yours very truly, Kneeland-Bigelow Company. J. E. Dewey."

(On letterhead of Foster-Latimer Lumber Co:)

"April 16th, 1923.

Edward Hines Lumber Co., Chicago, Ill.

GENTLEMEN: We have your letter of April 13th, regarding an order you have just sold for approximately 300 M feet of 13/16 x 2 1/4 face Clear Maple Flooring.

[fol. 749] While we appreciate very much the opportunity given us to handle this, we regret we are not able to take care of an order for such a large amount of this particular item. We are now sold three or four months ahead of the factory on Clear Maple Flooring and it would take us the balance of the year at least to secure the amount you require, without selling another foot and we of course have our regular established trade to take care of.

Thanking you for your letter, we are,

Yours truly, Foster-Latimer Lumber Co. Pearson."

(On the letterhead of I. Stephenson Co. Trustees:)

"Wells, Delta Co., Mich., Apr. 16, 1923.

Edward Hines Lumber Company, 2431 So. Lincoln Str., Chicago, Ill.

GENTLEMEN:

Attention Mr. J. H. Vanlandingham

Replying to yours of the 12th inst., in reference to your order for 300,000' of 2 1/4" Clear Maple Flooring, we are considerably over-sold on this item at the present time, and on account of the scarcity of Flooring lumber it is very uncertain just how much Flooring we

will be able to produce this year. Before giving you a definite reply, we would like to know more definitely when the stock will be wanted, in order that we may be able to furnish the stock promptly when needed.

The writer expects to be in Chicago, the 19th and 20th of this month, and if this is in time for your requirements, please let the matter rest until then, when we can go over it in person.

Yours truly, I. Stephenson Co., Trustees, per H. H. Shepeck,
Sales Manager.

[fol. 750] (On the letterhead of J. W. Wells Lumber Company:)

"Menominee, Mich., April 18, 1923.

Edward Hines Lumber Co., Chicago, Ill.

GENTLEMEN:

Mr. Vanlandingham

With further reference to your letter of April 12 and our telephone conversation of yesterday:

We would agree to get you out 300 M ft. of 13/16ths x 2¼" Face Clear Maple Flooring sometime within the next ten months, when we could get around to it, and at the market price, if this is agreeable to you.

We realize as well as you do that this is a very indefinite proposition but with the largely oversold condition of the Maple Flooring industry at present it is impossible for us to do any better, and we are taking this means of assuring you absolutely of the stock within that period.

Yours very truly, J. W. Wells Lumber Company."

(On letterhead of Northwestern Cooperage & Lumber Company:)

"Gladstone, Mich., April 17, 1923.

Edward Hines Lumber Co., Chicago, Ill.

GENTLEMEN: We are in receipt of yours of the 13th and we regret to advise that we are so badly oversold on 13/16 x 2¼" clear maple flooring at the present time that it would be impossible for us to take on an order of 300,000' even for deferred shipment. If you should find that you are unable to place the entire order with one mill, we could possibly take care of one or two cars.

We thank you for submitting this to us and shall be very pleased to hear from you if you decide to divide the order.

Yours truly, Northwestern Coop. & Lbr. Co., by C. C. Ogden."

[fol. 751] (On the letterhead of Kerry & Hanson Flooring Co.)

"Grayling, Michigan, April 17, 1923.

Edward Hines Lumber Co., Chicago, Ill.

GENTLEMEN: Answering your letter of April 12th, regarding order you have to place for 300,000'—13/16 x 2 1/4" Clear Maple Flooring for shipment the latter part of this year. We hardly feel able to protect you on any portion of this.

This size and grade is one of our best sellers and naturally we have a trade that looks to us to take care of their demands on same. There is also the point that 300,000' would represent at least three months' manufacture for us, which would tie us up to a great extent, if we undertook to fill the order. Last, but not least, there is the question of price, which we do not expect will be any lower later in the year.

We appreciate your writing us and regret that we cannot see our way clear to help you out.

Yours very truly, Kerry & Hanson Flg. Co., per Emil Grayling.

(On the letterhead of Stable Lumber and Salt Company:)

"Saginaw, Mich., April 16, 1923.

Edward Hines Lumber Co., Chicago, Ill.

GENTLEMEN: Replying to yours of the 13th in reference to your inquiry 300 M ft. 13/16 x 2 1/4" face Clear Maple flooring.

Under present conditions we would not care to quote you on this for delivery late in the year. We do not look for lower prices as the mills cannot supply the demand for maple flooring this year and it is a question as to whether there will be enough rough lumber to supply the flooring mills this year. According to prices the mills are asking for lumber today we will find it necessary to advance flooring at least \$10.00 per M in order to operate our plants at a profit.

Very truly yours, Strable Lumber & Salt Co. Geo. Strable, President."

[fol. 752] One of the manufacturers stated that he could furnish me a car or two and suggested that I get the rest of the amount wanted from other manufacturers. It is an advantage to a buyer or a yard man to be in a position where he can get a large lot of flooring from different manufacturers for the same job and have it match up.

We have had occasion to ask for a reinspection service of flooring received by us from members of the Maple Flooring Manufacturers Association which was not satisfactory grade. I remember of one inspector by the name of Tucker. Such complaints as we made have been adjusted satisfactorily. We do not make any distinction in purchasing flooring between member of the Maple Flooring Manufac-

turers Association and non members. We do not care from whom we buy flooring so long as we get what we buy.

Cross-examination.

By Mr. Thompson :

We have mills located in the South Pine territory at Lamberton, Mississippi, and Kiln, Mississippi. We also have a mill at Rice Lake, Wisconsin, one at Park Falls, Wisconsin, and are largely interested at Virginia and Rainy Lake, Minnesota. We have no interests in Western Pine or out in the West Coast Region nor in the Michigan lumber regions. We buy cuts from mills there, but we do not own any mills. The Mills at Park Falls and at Rice Lake produce maple lumber. The subsidiary that operates in Mississippi are members of the Southern Pine Manufacturers Association and the ones in Wisconsin are members of the Northern Hemlock & Hardwood Manufacturers Association. The ones in Minnesota belong to the Northern Pine Association. Mr. Hines has always been a very active member of all the Associations we belong to. I have no knowledge of the membership [fol. 753] of the Maple Flooring Manufacturers Association. I have heard that there was such an association, but beyond that I have no knowledge of the active workings of the Association. I know nothing at all as to what it has done or what activities it has carried on. The opinion that I gave with reference to the existence of competition is based upon such documents as I have identified her- and my personal interviews with various salesmen and manufacturers with reference to the prices on maple, beech and birch flooring.

Redirect examination.

By Mr. Darby :

Some of the members of the present Maple Flooring Manufacturers Association stated on the list you show me are competitors of the Edward Hines Lumber Company in hardwood lumber. For instance, Holt Hardwood Company, Kneeland & McLurg, Nichols & Cox, Northwestern Cooperage & Lumber Company, I. Stephenson Company, J. W. Wells Lumber Company, W. D. Young & Co. The firms above named besides manufacturing maple flooring, manufacture a great many items of lumber products, and come into direct competition throughout the United States with the Edward Hines Lumber Company. The inquiries and quotations that have been read in evidence are typical of our experience for the time that we have been in business of variations in quotations that have been received from different manufacturers. The documents that have been identified by me were given to you when you came out to our plant. I turned you over to an office boy with instructions to let you have anything you wanted and he stated to me in your presence that he had given you all that he had been able to find. He stated that he had not been able to find the quotations for the year 1920. There are so many thousands of inquiries and quotations that after they

[fol. 754] are dead for two years we burn them up because they constitute no record that is necessary for the running of our business. The inquiries that have been identified were made in the ordinary course of business and the responses that are attached thereto are, I presume, all that the boy was able to find and that we received. Some of the inquiries were sent out for the purpose of getting prices so that we could make a bid. Our bid may not have been accepted and consequently we may not have bought the flooring, but the inquiries sent out were sent out looking forward to the making of contracts. In the conduct of our business we have been able at times to get a manufacturer to lower his price in order to meet competition. That has been done frequently.

(Said documents identified by the witness and marked as Exhibits were received in evidence as Defendants' Barth Exhibits 1 to 23, inclusive.)

[fol. 755] DEPOSITION OF CORNELIUS A. FLANAGIN, TAKEN, PURSUANT TO STIPULATION, AT CHICAGO, ILLINOIS, ON OCTOBER 19, 1923.

C. A. FLANAGIN, being sworn, testified as follows:

Direct examination.

By Mr. Darby:

I am a citizen and resident of Chicago, Illinois and am engaged in the lumber business. I am the Vice President of Rittenhouse & Embree Company. I have been engaged in the lumber business for 25 years, in practically all branches. I have been in the manufacturing end and the buying and selling of lumber of all kinds. Rittenhouse & Embree Company are wholesalers and retailers of all kinds of lumber in Chicago. We handle pine lumber, hardwood lumber, hardwood flooring, pine flooring of all kinds, everything, in fact, in lumber, both rough and dressed.

Rittenhouse & Embree Company does not manufacture any maple, beech or birch flooring at the present time. The Company discontinued the manufacture of such flooring in 1915, I believe. Since 1915 our Company has bought such maple, beech and birch flooring as it has handled. We handle approximately three million feet of maple, beech and birch flooring annually. The Rittenhouse & Embree Company was once engaged in the manufacture of maple, beech and birch flooring in Chicago.

Q. Why did your company cease the manufacture of maple, beech and birch flooring?

A. Well, it reached a point where we considered that we could make more money buying our flooring than manufacturing it; we had to bring the lumber in here green, and dry it; and of course there is a great deal of waste in manufacturing, there is a waste in [fol. 756] kiln drying, and then a large waste in ripping the lum-

ber. I do not know how elaborately you want me to go into this, but, if you know, lumber is produced from a log in random widths, and then it has to be ripped into flooring widths, widths that will make standard widths of flooring; and in ripping it there is a large waste to it. Well, of course, we had to pay freight on this lumber in the green, and there was a big loss there, over manufacturing it at the mills; of course they have the same loss in ripping and in waste, but they do not have to pay freight on it; and then other conditions, labor conditions, were against manufacturing in Chicago, also, so that we have found that we can make more money buying our maple and oak flooring, both, than manufacturing it.

Q. Did you go into the matter of costs before you ceased the manufacture of it?

A. That is the reason that we ceased to manufacture it. For a good many years, like others, I presume we ran our business all in together, and we were making some money, and did not know where we were making it; and when I took over the management of the manufacture of the hardwood flooring, I started keeping costs; I had a little suspicion that we were not doing as well out of that department as we thought we were; and I kept cost, very complete, kept cost of each department, even to the tying up of the flooring, the twine we used, and the cost of ripping it, kiln drying and waste, between the green lumber and the kiln dried, and the waste between the kiln dried and the manufactured product, kept all those wastes, [fol. 757] and all the costs of each operation; and I found at the end of the first year we would be better off if we were not manufacturing; and when I showed the results to our Board of Directors they gave me one year longer to test it out; they were not quite satisfied; but at the end of the second year the results were such that they immediately decided to discontinue manufacturing in Chicago.

Q. What did you do with that plant?

A. Wrecked it; sold the machines for what we could get for junk.

Q. You spoke about the waste between two different processes there. State where the waste is, and give the percentages, approximately, if you can?

A. Well, that is some time ago. As far as I can remember—as near as I can remember it, the waste on maple between measurement as it came into our yard and the measurement as it came out of the kilns, was about eight per cent, as I remember it. And then the shrinking between the kiln and the manufactured product would vary according to the class of lumber; you will get better maple from one section than you will from another, you know; it will work up to better advantage; but as I remember it, it ran all the way from fifteen to twenty-two or twenty-three per cent waste.

A. Additional?

A. Yes, sir.

Since 1915 we have bought such maple, beech and birch flooring as we have handled and have supplied the flooring for a great many large buildings here in Chicago, either before or since 1915. We furnished practically all the large buildings on State Street, start-[fol. 758] ing with Rothschilds, The Hub Department Store, The

Boston Store, Marshall Field's Store for Men, Hibbard, Spencer, Bartlett's stores and warehouses, Rock Island Depot, The Railway Exchange Building, both sections of the First National Bank Building, The Continental Bank Building, the building occupied by the Edison Company. We also furnished the flooring for both sections of the Illinois Merchants Bank Building now under construction, which will use approximately 800,000 feet. The other buildings mentioned above are large, modern buildings and take on an average of about 200,000 feet each.

There are more than 100 wholesale and retail yards in Chicago which handle maple, beech and birch flooring. In selling maple, beech and birch flooring in Chicago we met with severe competition. The competition in Chicago is always very keen. Since 1915 I have bought all the maple, beech and birch flooring that has been handled by our firm. I have charge of the buying and selling of the lumber in our business. I have been familiar with the prices charged by the manufacturers of maple, beech and birch flooring since 1915. I keep in touch with the prices for such commodities largely through two methods. A great many salesmen call on me every day, selling all kinds of lumber, among them maple, beech and birch, as well as oak flooring. They are always soliciting my business and quoting me prices. Occasionally we send out inquiries to a lot of different manufacturers in order to check up the market. We have bought maple, beech and birch flooring from W. D. Young & Company, I. Stephenson, Trustees and West Michigan Flooring Company. I think I know the members of what is called the Maple Flooring Manufacturers Association. I try to keep posted on mills [fol. 759] that are members. We have bought at one time or another from many of the members of the Association. We buy the bulk of our flooring from Cobbs & Mitchell at Cadillac. We buy occasionally from Strable Lumber & Salt Company, Saginaw, from Kerry & Hanson, Grayling, from Bigelow-Cooper Company, Bay City, from R. Connor Company and William Horner, but our experience has not been really satisfactory with Horner's stuff. We have received quotations from other members of the different associations called the Maple Flooring Manufacturers Association. We get prices from a great many of them when we are placing an order. If we are placing it with anyone other than Cobbs & Mitchell, or if we are checking up on prices made us at Cadillac, we send out inquiries for the purpose of getting a line on the market.

Q. Would you say that there is now or has ever been since 1915 any uniform price in maple, beech and birch flooring in Chicago?

A. No. On the contrary I would say that there has been quite a variation in price.

Q. Would you say that competition exists among the different manufacturers of maple, beech and birch flooring?

A. Yes, sir. If you don't think so, all you have to do is send out and inquire, of about a half a dozen of them.

We prefer to deal with members of the Association and perhaps seventy-five or maybe ninety per cent of our business is done with Cobbs & Mitchell and Mitchell Brothers, Cadillac.

Q. Why do you prefer to deal with members of the defendant Association?

[fol. 760] A. Well, for many reasons. One of our reasons is that we are surer of getting a uniform grade of flooring and uniform manufacture; and in case we have any complaint on it, as often will happen, even if the grade is right,—an architect may not be feeling just right when he looks at it, and he will think that it is off grade, or perhaps the owner is complaining to the architect, and it is very easy for the architect to fall back on the material men, the yard here, that is the go-between between the manufacturer and the consumer, and he will complain about the grade; well, if we are buying association flooring all we have to do is call for an association inspector, and if the flooring is right, that settles it, and if it is not right, then we go on the manufacturer. Of course, if it is not right we want to protect the architect and the consumer. If it is right it settles any argument,—which we could not settle otherwise.

Q. Have you had occasion to have re-inspections, as they are called?

A. Yes, sir.

Q. State whether or not those re-inspections have been satisfactory to you and your clients, or unsatisfactory?

A. Why, they have been satisfactory. We have had different results. I call to mind about a year ago, I think, that we had a complaint on some maple flooring, factory maple, from I. Stephenson Company; and we called for the association inspector, and he sustained our customer's complaint, and I. Stephenson & Company had to make good through us to our customer.

Q. Did they do that readily?

A. Oh, yes. They sent a man down here, their Mr. Shepeck, from Wells, came down here and authorized our customer to go ahead [fol. 761] and sort the flooring and use what he could, and they paid for the labor and replaced the flooring.

Q. Have such disputes as have arisen been adjusted satisfactorily to you and to your customers?

A. Yes, sir.

Q. Either one way or the other?

A. Yes. We have had complaints where the customer was wrong and where the inspector sustained the manufacturer; but it was always satisfactory; after the inspector had made his inspection and given his report, why, that settled it,—every one was satisfied.

Q. Would you say that that inspection service of any of the associations that have been in existence since 1915 has been honestly and impartially conducted?

A. Yes, sir; decidedly so.

We used to buy of R. Connor Company when they were members of the Association. When they discontinued their membership in the Association we ceased to buy from them because we felt that we had no protection if there should be a complaint on the grades.

Q. State whether there is any difference between the uniformity of grades manufactured by members of the Maple Flooring Manufacturers Association and the grades that are manufactured by non-members?

A. Outside of Cadillac I think the grades are very uniform. We consider Cadillac makes a better grade of maple flooring than any other manufacturer than we know anything about. In fact, they [fol. 762] make a better grade of flooring than we made ourselves, and we thought we made as good a grade as could be produced.

Q. To whom do you refer by "Cadillac"?

A. Cobbs & Mitchell,—Cobbs & Mitchell and Mitchell Brothers, their grades are identical, the two plants.

Q. Leaving out Cobbs & Mitchell, and taking the grades manufactured by the other members of the Association, how does that compare with the grades of non-members?

A. I would say they were very uniform, outside of Horner's grades; I am not familiar with them since he has been a member of the Association; before that time his grades were unsatisfactory, so much so that we discontinued any business with him.

Q. How about the machine work on them?

A. Their machine work is all very good; they interchange, you know, and if you have a carload of flooring from one concern it is a big advantage to be able to match that up with somebody else, in case you can buy a little cheaper from some other manufacturer, and you have a part of a carload on hand, it enables you to buy from some other manufacturer and mix it right in and ship it out. Otherwise you would have to keep a little of this man's flooring, and a little of the others, and if you had a little on hand you would have to keep it entirely separate and ship it separate, which would be quite a hardship on the lumber yards.

Q. The matching of the products of the different Association members has been brought about, say, within the last two or three years, has it not?

A. Largely so, yes, sir.

[fol. 763] Q. You consider that change a distinct advantage to the buyer?

A. To the dealer, yes, sir.

Q. To the dealer?

A. To the dealer, yes, sir; it enables him to carry less flooring on hand, as I just explained. You do not have to have to many different kinds, in case he changes in buying from one to another.

Q. Have you bought any flooring of Horner's, after he became a member?

A. No, I think not.

Q. State whether or not you have ever had any talks with Association members with respect to meeting competition of another member of the Association?

A. Why, my understanding is that Cadillac,—Cobbs & Mitchell and Mitchell Brothers, are members of the Association. They tell me they are.

Q. Yes.

A. And I have had a good many talks with Mr. Thomas, the sales-manager of those two companies, as we handle their flooring largely; I have met Mr. Thomas and gone into details several times on com-

petition. Sometimes he would decide that they could meet it, and other times would show us where he could not afford to meet it.

Q. What did he say to you?

A. He would show me their cost of manufacturing, and the cost of the rough material; and, of course, having been manufacturers ourselves, he could show me, and I could understand it. I could probably understand costs pretty nearly as well as he could; and he showed me what they were paying for the lumber, and the percentage of grades they were getting from the lumber they bought, and what [fol. 764] it cost to manufacture; and in some cases he could not meet the competition; in other cases he would decide to meet it.

Q. Did that competition concern both or either members of the Association or non-members?

A. According to my understanding it has, yes, sir.

Q. Do you recall any conversation that you had with him with respect to the Wrigley Building?

A. Yes, sir.

Q. Please state what that conversation was?

A. I met Mr. Thomas here in Chicago, and told him the price that we could get for the flooring, and——

Mr. Newman:

Q. For the Wrigley Building?

A. Yes, sir. And he happened to have his cost sheets with him, that he had made some tests, just a few days before, test runs of some stock; and we figured out that we could not afford to meet the competition, that there would be no money in it either for Cobbs & Mitchell or for Rittenhouse & Embree Co.

Mr. Darby:

Q. What is your opinion with respect to whether the prices of maple, beech and birch flooring since 1915 up until and including the present date have been fair and reasonable to the consumer, or to the wholesaler?

A. If you will just state the first part of your question,—I did not get the whole of the question.

Q. What is your opinion as to whether the prices for maple, beech and birch flooring have been fair and reasonable to buyers and to the public since 1915, up to the present time?

A. Yes, sir; I think they have been fair. They have fluctuated a great deal, due to supply and demand. During the war there was [fol. 765] a shortage of flooring, and prices, like everything else, went out of sight; but I think they have been very fair and equitable at all times, compared to the price of rough material and the cost of manufacture.

Q. Do you remember the conditions that obtained in 1920?

A. In a general way, yes, sir.

Q. In a general way?

A. Yes, sir.

Q. And with respect to maple, beech and birch flooring?

A. Yes, sir; I remember it quite distinctly.

Q. I wish you would explain.

A. Because we had quite a heavy loss during that time on maple flooring.

Q. What were the conditions that obtained then?

A. There was a tremendous shortage of flooring, and flooring pyramided in price, by everybody. If I can use my own language in describing our case I think perhaps it will answer your question. We had a couple of quite large jobs sold here at a fixed price. A price that was in effect at the time that we sold the job, but on account of labor conditions which existed during the war, jobs were delayed materially, strikes and shortage of labor, and in the meantime the mills that we had placed this flooring with had labor troubles and were not able to supply the flooring; and we had to go out into the market and buy it, and we stood a loss of between \$25,000 and \$26,000, actual money.

Q. There was a great demand for flooring during that year?

A. A tremendously high demand, and it was very hard to get flooring, at any price.

Q. Was that called a buyers' market or a sellers' market?

[fol. 766] A. I would call that a sellers' market, I would think.

Q. How about the year 1921?

A. Well, let us see. In 1921, flooring, as I remember it, became easier, more plentiful. As I remember it, the price began to go down.

Q. From your experience and observation as a buyer of lumber, or, rather, of maple, beech and birch flooring, have you observed or not observed a variation in prices that have been quoted you by different members of the Association?

A. Yes; there is always a variation in prices; if you send out inquiries, if you are in the market and send out a lot of inquiries you will get quite a variation in prices, anywhere from fifty cents to five dollars, I would say.

Q. That is, per carload, or on a thousand feet?

A. Well, per thousand feet.

Q. Would you say that the variation in the prices of maple, beech and birch flooring are less or greater than or equal to the variation in prices of other hardwood floorings and other lumber products generally?

A. They are as great if not greater.

Q. They are?

A. Yes, sir.

We buy our flooring delivered at destination because we prefer to buy that way in order to get away from the annoyance of filing claims with the railroad for overcharges and weights and freights, etc. If a car of lumber is damaged in transit, it is the mill's trouble with the railroad. We eliminate a lot of expense, clerical help and annoyance by buying delivered. It is cheaper to us to buy delivered than it is f. o. b. mills. We always ask for quotations for flooring

[fol. 767] delivered. We sell most of our flooring largely in Chicago.

I know that the Maple Flooring Manufacturers Association has carried on many advertising campaigns. I remember that they got out a book some time ago which was circulated among architects and consumers that was very beneficial to the industry and to dealers generally.

The Rittenhouse & Embree Company, through subsidiary corporations, have mills in three different southern states. The Rittenhouse & Embree Company handles about 150 million feet of lumber annually.

Cross-examination.

By Mr. Thompson:

I testified that probably 90% of our flooring is purchased from Cobbs & Mitchell and Mitchell Brothers. Primarily our purpose in getting prices from other manufacturers would be to insure that Cobbs & Mitchell and Mitchell Brothers' prices were not out of line and for the purpose of finding out whether we were in position to meet competition. Our competition is very hard and we have to know all the time that we are buying flooring as cheap as any of our competitors; otherwise we will be handicapped right away.

If we had a large order to place, we would send out probably half a dozen inquiries to different manufacturers located in different sections. These inquiries would not be addressed solely to members of the Maple Flooring Manufacturers Association. We have sent inquiries to R. Connor Company since they ceased to be members. We used occasionally to send inquiries to Horner. We send inquiries occasionally to Ward Brothers and to a man by the name of Horn here in Chicago.

[fol. 768] We are always willing to pay Cobbs & Mitchell and Mitchell Brothers more for their product than any other manufacturer. If the answers to the inquiries that we send out show such a great difference between the prices of Cobbs & Mitchell and Mitchell Brothers and the prices of other manufacturers that we do not feel that we can afford to pay the difference, we go after Cobbs & Mitchell and Mitchell Brothers in order to get them to reduce their price. If we feel that we can afford to pay the difference, why we throw the quotations received from other manufacturers into the waste basket. After the quotations have served their purpose, we destroy them.

I testified that there would always be a difference in the prices quoted by different manufacturers. You might get two or three where the prices would be the same and then you would get some that would be one dollar less and you might get some four or five dollars less. It would depend on market conditions, how much business they had on hand, I suppose, and how badly they wanted orders. Sometimes Cadillac's price is lower than any other prices we are quoted and, of course, that would settle it immediately.

We were a member of the Maple Flooring Manufacturers Asso-

ciation previous to 1915 when we manufactured maple, birch and beech flooring.

Redirect examination.

By Mr. Darby:

During 1915 and before I looked after the manufacturing, I think that Mr. Rittenhouse of Rittenhouse & Embree represented the company in the Maple Flooring Manufacturers Association and attended the meetings. Mr. Rittenhouse is now dead. He died in 1915. When our Company was a member I looked after the manufacturing and buying and selling.

[fol. 769] DEPOSITION OF LAWRENCE J. KOERBLE, TAKEN AT CHICAGO, PURSUANT TO STIPULATION, ON OCTOBER 20, 1923

LAWRENCE J. KOERBLE, being first duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

I am 51 years of age and am Purchasing Agent and Traffic Manager of the John Schroeder Lumber Company of Milwaukee, Wisconsin. I have been associated with that Company for 22 years. Our Company handles everything in the lumber line. We have plants in Canada, British Columbia, Milwaukee, Wisconsin and Michigan. We have subsidiary companies in Colorado, New York, Oregon, as well as plants in Mississippi. We handle annually about 750 million feet of lumber. The John Schroeder Lumber Company once manufactured maple, beech and birch flooring as well as oak flooring. I think we started manufacturing flooring about 1890, until we decided to quit in 1913. We had figured out that we could not make any money in the manufacture of flooring and would not buy any more lumber for the manufacture of flooring. Later on our Government ordered us to start making maple flooring again. A lot of Government work was allocated to us and we had to go back into the game. We continued the manufacture of maple flooring until after the war. We quit the manufacture of maple, beech and birch flooring at the beginning of 1922. We worked up what stock we had during the year 1921 for our own retail orders. We did not wholesale any flooring that we made ourselves. If we did sell any at wholesale, we bought it from other manufacturers.

During the years previous to 1913, the John Schroeder Lumber Company was a member of some Maple Flooring Manufacturers [fol. 770] Association, but nobody ever attended the meetings. I personally never attended any meetings whatsoever.

We quit the manufacture of maple, beech and birch flooring at the beginning of 1922 because we could not make a dollar out of it. We were losing money on every foot that we made. Since that

time we have procured maple, beech and birch flooring for our retail yard in Milwaukee from other manufacturers. I generally make out an estimate as to just how much we require and we send out inquiries addressed to different manufacturers and I place the order with the manufacturer who makes the best price. We place an order for five or ten or fifteen cars, or our requirements for six months, if the manufacturer is willing to take such an order at a good price. I dictate an inquiry to my secretary stating the kinds of flooring I desire and asking the manufacturers to quote me the best prices delivered for so many feet of flooring. My secretary gets out a sheet like the one I have in my hand and when quotations come in, I hand them to my secretary, who tabulates them, after which I check them over with him and buy upon the basis of quotations received.

I have brought with me such tabulations, inquiries and answers thereto as we have been able to find in the office of the John Schroeder Lumber Company. Here they are.

Defendants' Koerble Exhibit 1 for identification is an inquiry sent out by John Schroeder Lumber Company on July 17, 1923, for 190,-000 feet of 13/16 2¼" face No. 1 maple flooring and the quotations received in response thereto.

Some of the manufacturers at that time quoted on other items besides the flooring mentioned in the inquiry. On the 13/16 2¼" [fol. 771] clear maple flooring, the following quotations were received, the said quotations being delivered at Milwaukee unless otherwise specified:

Northwestern Lumber & Cooperage Company.....	\$104.00
Paul Knolk	125.00
Wilce Flooring Company	120.00
Wisconsin Land & Lumber Company	108.00
J. O. Nessen Lumber Company, as representative of the West Michigan Flooring Company.....	108.00
Ward Brothers	101.50
J. O. Nessen Lumber Company, as representative of the West Michigan Flooring Company.....	103.00
Clayton Gibson	97.00
E. Bartholomew Hardwood Lumber Company.....	109.00

At the same time we received the following quotations on 13/16 2¼" face No. 1 maple flooring:

Northwestern Cooperage & Lumber Company.....	\$94.00
Wisconsin Land & Lumber Company.....	98.00
I. Stephenson & Company	98.00
Flanner-Steger Land & Lumber Company.....	92.00
Wilce Flooring Company.....	105.00
Holt Hardwood Company	91.00
Nichols & Cox Lumber Company.....	93.00
J. W. Wells Lumber Company	98.00
East Jordan Lumber Company.....	93.50

Ward Brothers	88.50
J. O. Nessen Lumber Company, as representative of West Michigan Flooring Company	93.00

which was later revised.

Clayton Gibson	87.00
E. Bartholomew Hardwood Lumber Company	95.00
G. H. Tennant & Company	92.00
J. C. Hill Lumber Company	92.00

We also received the following quotations on 13/16 2¼" factory maple flooring:

Wilce Flooring Company	\$65.00
Wisconsin Land & Lumber Company	58.00
J. O. Nessen Lumber Company, as representative of West Michigan Flooring Company, \$58.00, which was later revised to	53.00
Clayton Gibson	49.00
E. Bartholomew Hardwood Lumber Company	65.00

[fol. 772] The other quotations listed on Defendants' Koerble Exhibit 1 for identification relate to oak flooring. These quotations were received at the same time we received quotations on 13/16 2¼" clear plain white oak flooring. That grade would match up with clear maple flooring. The wearing quality of the oak is not so good as the wearing quality of the maple. It will not last so long.

On 13/16 2¼" clear plain white oak flooring, we received the following quotations:

Morgan Lumber & Mfg. Co.	\$113.50
M. B. Farrin Lumber Co.	122.00
L. D. Leach & Co.	95.00
Nickey Bros.	103.00
Long-Bell Lumber Co.	103.00
De Soto Hardwood Flooring Company	109.50
Tennessee Oak Flooring Co.	109.00
Hudson Hardwood Flooring Co.	107.50
M. Strovers	100.00
Harris Manufacturing Co.	106.00
Morgan Lumber & Mfg. Co.	112.50
Farris Hardwood Lumber Co.	112.50
Campbell & Dann	108.00
McMinnville Mfg. Co.	105.00
Southern Lumber & Mfg. Co.	110.00
Clayton Gibson	104.00
E. Bartholomew Hardwood Lumber Co.	121.50

In Defendants' Koerble Exhibit 1 for identification, other quotations received relate to 13/16 2¼" clear plain red oak flooring. That grade would correspond to 13/16 x 2¼" face clear maple

flooring. The oak flooring above mentioned is not so hard as maple. It is laid in rooms where there is not much walking. It cannot stand water, while maple will stand water—scrubbing. The quotations we received at that time on 13/16 2¼" face clear plain red oak flooring are as follows:

[fol. 773] Morgan Lumber & Mfg. Co.....	\$111.50
M. B. Farrin Co.....	117.00
C. C. Beard.....	98.00
L. D. Leach & Co.....	95.00
Nickery Bros. Co.....	103.00
Long-Bell Lumber Co.....	98.00
De Soto Hardwood Flooring Co.....	104.50
Tennessee Oak Flooring Co.....	104.00
Hudson Hardwood Flooring Co.....	102.50
Tennessee Lumber & Manufacturing Co.....	100.00
M. Strovers.....	95.00
Harris Mfg. Co.....	101.00
Morgan Lumber & Mfg. Co.....	110.00
Jerome Hardwood Lumber Co.....	110.00
Farris Hardwood Lumber Co.....	110.00
Campbell & Dann Mfg. Co.....	105.00
McMinnville Mfg. Co.....	105.00
Southern Lumber & Mfg. Co.....	108.00
Clayton Gibson.....	99.00
E. Bartholomew Hardwood Lumber Co.....	116.00

Some of the persons, firms or corporations above mentioned are manufacturers, while others are jobbers.

Defendants' Exhibit No. 1 was received in evidence.

Defendants' Koerble Exhibit 2 for identification is an inquiry of January 24, 1919 for 13/16-2¼" face clear maple flooring, clear plain oak flooring, clear plain red oak flooring, plain select oak flooring and clear plain white oak flooring, and the responses that were received thereto.

The following quotations were received on 13/16 x 2¼" clear maple flooring:

William Horner.....	\$66.50
Nichols & Cox.....	75.00
Flanner-Steger Land & Lumber Co.....	72.50
W. D. Young & Company.....	70.50
West Michigan Flooring Company.....	72.50
Cummer-Diggins Company.....	71.50
Kerry & Hanson.....	75.00
Cobbs & Mitchell quoted on 13/16-2" clear maple flooring, 2-16'.....	71.50

[fol. 774] The quotations received on the 13/16-2¼" face clear plain oak flooring, which corresponds to the grade of clear maple flooring, but which is not so lasting as maple, were as follows:

Memphis Hardwood Flooring Co.....	\$103.50
Nashville Hardwood Flooring Co.....	100.50
Long-Bell Lumber Co.....	105.50

We also received two quotations on 13/16-2¼" face clear plain red oak flooring, which corresponds to the clear maple flooring, but will not last so long:

Nashville Hardwood Flooring Co.....	\$100.50
Bliss-Cook Oak Flooring Co.....	105.00

The 13/16-2¼" select plain white oak flooring corresponds to the No. 1 maple flooring. On the 13/16-2¼" select plain flooring we received the following quotations:

Memphis Hardwood Flooring Co.....	\$87.50
Mobrey & Robinson.....	87.50
Nashville Hardwood Flooring Co.....	84.50

We received also a quotation on 13/16-2¼" face clear Rockhead beech flooring. That is the same grade as the clear maple flooring only beech is a softer wood than the maple. The quotation made on the Rockhead beech flooring above mentioned was from Mitchell Brothers at \$72.50.

Said Defendants' Exhibit 2 was received in evidence.

Defendants' Koerble Exhibit 3 for identification is an inquiry we sent out, dated July 19, 1919, for the items of flooring herein-after mentioned, and the responses received thereto.

We did not receive any quotations on our inquiry for inch and 5/16ths x 2¼" face No. 1 maple flooring, nor on our inquiry for 13/16 x 2¼" face clear maple flooring. William Horner quoted \$75.00 factory and better inch and 5/16ths x 2¼" face. On 13/16 [fol. 774a] x 2¼" face No. 1, the following quotations were received:

J. W. Wells Lumber Company.....	\$73.50
Northwestern Cooperate & Lumber Company.....	74.00

No quotations were received on 3/8 x 1½ No. 1 Maple flooring. Mitchell Brothers quoted \$54.25 on 3/8 x 2" No. 1 Maple flooring.

Cummer-Diggins quoted \$50.00 on 13/16-2¼" face short maple flooring, 9-21", practically clear.

Kerry & Hanson Flooring Company quoted on 12", 14" and 16" flooring clear and No. 1, \$55.50, this is for 13/16-2¼" face.

J. W. Wells Lumber Company quoted on 13/16-2¼" face clear maple flooring 2-3½', \$74.50.

Northwestern Cooperage Company quoted on the same \$71.50.

W. D. Young & Company quoted on 13/16-2¼" face clear 9-12" in length, \$40.00 f. o. b. cars Bay City, Michigan.

Said Exhibit received in evidence.

Defendants' Koerble Exhibit 4 for identification, is an inquiry we sent out dated September 20, 1920 for certain items of flooring, and the responses that we received thereto.

The quotations received on 13/16 x 2 1/4" clear maple flooring are as follows:

I. Stephenson Company.....	\$225.00
Cummer-Diggins Company.....	177.00
Bigelow-Cooper Company.....	201.50
Nichols & Cox.....	187.50
Northwestern Lumber & Cooperate Co.....	185.00
Cobbs & Mitchell.....	182.50
Kerry & Hanson Flooring Co.....	182.50
West Michigan Flooring Co.....	197.50

The quotations we received on the 13/16-2 1/4" face No. 1 maple flooring were as follows:

Wisconsin Land & Lumber Co.....	\$170.00
G. H. Tennant Co.....	185.00
East Jordan Lumber Co.....	173.00
Strable Lumber & Salt Co.....	171.00

[fol. 774b] On the 13/16-2 1/4" face factory maple flooring, we received the following quotations:

Foster-Latimer Company.....	\$150.00
W. D. Young & Co.....	140.00
Bigelow-Cooper Co.....	159.50
Nichols & Cox.....	137.50
Northwestern Cooperage & Lumber Co.....	150.00
Cobbs & Mitchell.....	127.50
G. H. Tennant Co.....	155.00
East Jordan Lumber Co.....	130.00
Kerry & Hanson Flooring Co.....	132.50
Strable Lumber & Salt Co.....	146.00
Wisconsin Land & Lumber Co.....	135.00
I. Stephenson Company.....	150.00
Cummer-Diggins Lumber Co.....	126.00

On 13/16 x 2 1/4" face No. 2 factory maple flooring I. Stephenson Company quoted \$100.00.

On 13/16 x 2 1/4" face factory maple flooring, West Michigan Flooring Company quoted \$137.50.

On 13/16 x 3 1/4" face clear maple flooring, North Branch Flooring Company quoted \$185.00.

On 13/16 x 3 1/4" face factory maple flooring, North Branch Flooring Company quoted \$135.00.

On inch and 1/16th x 2 1/4" face clear maple flooring, J. W. Wells Lumber Company quoted \$200.00.

All prices above mentioned, except where otherwise specified, were f. o. b. cars Milwaukee.

Said Exhibit received in evidence.

Defendants' Koerble Exhibit 5 for identification is an inquiry sent out by us on December 9, 1918 for various items of maple flooring and the quotations that we received in response thereto. [fol. 775] On 13/16-2¼" clear maple flooring, we received the following quotations:

J. W. Wells Lumber Co.....	\$57.00
T. Wilce Co.....	63.25
I. Stephenson Co.....	59.50
Mason Donaldson Co.....	58.00
R. Connor Co.....	57.00
August Beck Co.....	59.00
William Horner.....	57.00
Nichols & Cox.....	57.50
Strable Lumber & Salt Co.....	58.00
Foster-Latimer Lumber Co.....	58.50
West Michigan Flooring Co.....	59.50
less \$1 Com.	
Cummer-Diggins Co.....	58.50
Cobbs & Mitchell.....	56.50
Flanner-Steger Land & Lumber Co.....	59.00
East Jordan Lumber Co.....	59.50
Kerry & Hanson Flooring Co.....	59.50

On 13/16 x 2" face clear maple flooring, we received the following quotations:

J. W. Wells Lumber Co.....	\$54.00
T. Wilce Co.....	61.25
William Horner.....	52.00
Nichols & Cox.....	55.50
Strable Lumber & Salt Co.....	57.00
West Michigan Flooring Co.....	57.50
less \$1 Com.	
Cobbs & Mitchell.....	54.50
W. D. Young & Co.....	55.00
East Jordan Lumber Co.....	57.50
Kerry & Hanson Flooring Co.....	57.50

On 3/8 x 2" face clear maple flooring, we received the following quotations:

T. Wilce Co.....	\$48.75
William Horner.....	41.00
Dwight Lumber Co.....	48.00
f. o. b. cars Detroit.	
Nichols & Cox.....	47.00
Strable Lumber & Salt Co.....	41.50
West Michigan Flooring Co.....	42.25
less \$1 Com.	
Cummer-Diggins Co.....	42.00
Cobbs & Mitchell.....	41.25

W. D. Young & Co.....	40.00
Flanner-Steger Land & Lumber Co.....	45.00
Kerry & Hanson Flooring Co.....	47.25

[fol. 776] On $\frac{3}{8}$ x $1\frac{1}{2}$ " face clear maple flooring, we received the following quotations:

J. W. Wells Lumber Co.	\$40.00
Kerry & Hanson Flooring Co.	44.25

On 13/16 x $1\frac{1}{2}$ " face clear maple flooring, we received the following quotations:

I. Stephenson Co.	\$58.50
R. Connor Co.	56.00
Nichols & Cox	55.50

On 13/16 x $1\frac{1}{2}$ " face No. 1 maple flooring, Nichols & Cox quoted \$44.50.

On 13/16 x $1\frac{1}{2}$ " clear beech flooring, Nichols & Cox quoted \$52.50.

On 13/16 x $1\frac{1}{2}$ " clear birch flooring, Nichols & Cox quoted \$55.50.

All the foregoing quotations, unless otherwise specified, were f. o. b. cars Milwaukee.

Said Exhibit received in evidence.

Defendants' Koerble Exhibit 6 for identification is a request that we made on October 21, 1918 for quotations on 20,000 feet of 13/16 x $3\frac{1}{4}$ " face No. 1 maple flooring and the quotations received in response thereto.

We received the following quotations on 13/16 x $3\frac{1}{4}$ " face clear maple flooring:

Bigelow-Cooper Co.	\$55.75
W. D. Young & Co.	55.75
less \$2.00 per M commission.	
Kerry & Hanson Flooring Co.	55.75
less \$2.00 per M commission.	
Cobbs & Mitchell	54.75
less \$1.00 per M commission.	

[fol. 777] On 13/16 x $3\frac{1}{4}$ " face No. 1 maple flooring, we received the following quotations:

West Michigan Flooring Co.	\$53.75
Flanner-Steger Land & Lumber Co.	53.50
William Horner	51.00
J. W. Wells Lumber Co.	52.00
Bigelow-Cooper	53.75
Nichols & Cox Lumber Co.	54.50
Kerry & Hanson Flooring Co.	53.75
less \$2.00 per M commission.	

Mason & Donaldson quoted \$56.50 on 13/16 x 2¼" face No. 1 maple flooring.

Mitchell Brothers quoted \$40.00 f. o. b. cars Jennings, Michigan on ¾ x 2" face clear maple flooring.

West Michigan Flooring Co. on item last mentioned above quoted \$40.00 f. o. b. cars Manistee, Michigan and the Northwestern Co. operage & Lumber Co. quoted \$40.00 f. o. b. cars Gladstone, Michigan.

W. D. Young & Co. quoted on 1½ and 2" face ¾" thick No. 1 maple flooring \$40.00 f. o. b. cars Bay City, Michigan, less \$2.00 per M commission.

East Jordan Lumber Company quoted on 13/16 x 2" No. 1 maple flooring \$53.50 and for 2¼" face \$55.50.

All prices above named, except otherwise mentioned, are f. o. b. cars Milwaukee.

Said Exhibit received in evidence.

Defendants' Koerble Exhibit 7 for identification is an inquiry that we sent out dated April 23, 1920 for certain items of ample flooring and the quotations we received in response thereto.

On 13/16 x 2¼" face No. 1 maple flooring, we received the following quotations:

Foster-Latimer Co.	\$185.00
Northwestern Cooperage & Lumber Co.	190.00
Wisconsin Land & Lumber Co.	185.00
[fol. 778] Charles Horn Lumber Co.	197.50
Nichols & Cox	192.50
G. H. Tennant Co.	200.00

On 13/16 x 2¼" factory maple flooring, we receive the following quotations:

Foster-Latimer Co.	\$150.00
Wisconsin Land & Lumber Co.	155.00
I. Stephenson Co.	160.00
Charles Horn Lumber Co.	162.50
Nichols & Cox Lumber Co.	176.50

On the 13/16 x 2¼" face No. 2 factory maple flooring, I. Stephenson quoted \$103.00.

On 13/16 x 2¼" face clear maple flooring, we received the following quotations:

Foster-Latimer Co.	\$200.00
J. W. Wells Lumber Co.	200.00
I. Stephenson Co.	230.00
Charles Horn Lumber Co.	215.00
Nichols & Cox Lumber Co.	197.50
G. H. Tennant Co.	215.00

On ¾ x 2" face No. 1 maple flooring, the Wisconsin Land & Lumber Co. quoted \$140.00.

On $\frac{3}{8}$ x $1\frac{1}{2}$ " face No. 1 maple flooring, the Wisconsin Land & Lumber Co. quoted \$140.00.

On $\frac{3}{8}$ x $1\frac{1}{2}$ " No. 1 birch flooring, the Wisconsin Land & Lumber Co. quoted \$140.00.

On $\frac{3}{8}$ x $1\frac{1}{2}$ " clear select red birch flooring, the Wisconsin Land & Lumber Company quoted \$170.00.

And on $13/16$ x $1\frac{1}{2}$ " face select red birch flooring, the Wisconsin Land & Lumber Co. quoted \$230.00.

On $13/16$ x $2\frac{1}{4}$ " No. 1 factory flooring, the Wisconsin Land & Lumber Company quoted \$155.00.

And Charles Horn Lumber Company quoted \$147.50.

[fol. 779] On $13/16$ x $2\frac{1}{4}$ " face plain red oak flooring, Charles Horn Lumber Company quoted \$265.00.

And on $13/16$ x $2\frac{1}{4}$ " face clear plain white oak flooring, Charles Horn Lumber Company quoted \$265.00.

The clear red oak and the clear white oak will match up in grade with the clear maple flooring. In other words, clear oak flooring is of the same grade as the clear maple flooring, but the wearing quality of the maple flooring is far superior to that of the oak flooring.

Said Exhibit received in evidence.

Defendants' Koerble Exhibit 8 for identification is an inquiry for certain items of maple flooring during July, 1922 and the quotations received in response thereto. Said quotations are as follows:

On $13/16$ x $2\frac{1}{4}$ " face clear maple flooring, E. Bartholomew quoted \$99.00.

On $13/16$ x $2\frac{1}{4}$ " face No. 1 maple flooring, the following quotations were received:

I. Stephenson Co.	\$83.50
E. Bartholomew	89.00
William Horner	89.00
less \$2.00 per M commission.	
Holt Hardwood Co.	83.50
less \$2.00 per M commission.	

On $13/16$ x $2\frac{1}{4}$ " factory maple flooring, we received the following quotations:

[fol. 780] J. W. Wells Lumber Co.	\$31.50
E. Bartholomew	39.00
William Horner	39.00
less \$2.00 per M commission.	
Holt Hardwood Co.	33.50
less \$2.00 per M commission.	
I. Stephenson Co.	33.50

On $13/16$ x $2\frac{1}{4}$ " face No. 2 factory maple flooring, I. Stephenson Co. quoted \$21.50.

Said Exhibit received in evidence.

Defendants' Koerble Exhibit 9 is an inquiry sent out by us on January 6th, 1922, for 100,000 feet of 13/16 x 1 1/2" Clear Maple Flooring, which was sent out to some 15 or 20 manufacturers and the quotations that we received in response thereto. The quotations that we received were as follows:

Northwestern Cooperage & Lumber Co.	\$88.50
Holt Hardwood Lumber Co.	85.00
J. W. Wells Lumber Co.	81.50
Nichols & Cox	83.50
E. Bartholomew Hardwood Co.	86.00

All the quotations above named were for the flooring delivered at Milwaukee.

Said Exhibit received in evidence.

Defendants' Koerble Exhibit 10 for identification is an inquiry that we sent out on August 1st, 1922, for 50,000 feet of 1 1/16 x 3 1/4 inch face Factory and better maple flooring and 1 1/16 inch by 3 1/4 inch face Clear maple flooring, and the quotations that we received in response thereto. On the clear we received the following quotations:

Holt Hardwood Co.	\$93.50
William Horner	80.00
Kerry & Hanson Flooring Co.	86.00

We were given the following quotations on No. 1 maple flooring:

Holt Hardwood Co.	\$83.50
------------------------	---------

We received the following quotation on 1 1/16" 3 1/4" face Factory maple flooring:

Holt Hardwood Co.	\$38.50
Kerry & Hanson Flooring Co.	41.00
Bigelow-Cooper Co.	43.75

(Said exhibit received in evidence.)

We will not buy anything from any one unless they make us a delivered price. We want the other fellow to worry about freight claims. Some manufacturers of flooring allow a commission of \$1.00, others \$1.50, and some give \$2.00, but the majority do not give any commission at all. Some manufacturers would sometimes make a price and then make us of a commission to trade with. There has never been any uniform practice to allow \$2.00 commission. There have never been any uniform terms of sale on maple, beech and birch flooring. The terms vary. Some manufacturers give one per cent, some 1 1/2 per cent in fifteen days from date of invoice; others give two per cent ten days after arrival of car.

[fol. 782] "Q. Now, would you say that, as long as you have been in the lumber business, there has been any uniform price for maple, beech or birch flooring?"

A. No, sir, there never was; the price all depended on the stock a man had; if his stock was great of a grade, he would cut the price and move it.

Q. Would you say that there has existed during all the time that you have been handling maple, beech and birch flooring, competition among the different manufacturers for business?

A. Yes, they always competed.

Q. Have the quotations that you have received during all that time varied, as between the different manufacturers?

A. Yes, sir, they have always varied. Of course, there were always some that were like the other fellow.

Q. But there was always a high and a low?

A. Yes, sir. For instance, we sent out today a yellow pine inquiry, and we send it out to 500 mills, and you will find 175 of them are the same price.

Q. And there will be variations?

A. And there will be variations of from \$1 to \$10 a thousand in some items.

Q. What would you say as to the reasonableness or unreasonableness of the prices of maple, beech and birch flooring since you have been buying it, after your going out of business in 1921, that is, after you ceased manufacturing it in 1921?

A. The maple flooring, at the prices we have been paying for it, and against the price of rough lumber, we are far better off to buy the flooring.

Q. Than to manufacture it?

A. Yes, sir.

Q. You consider that the prices that the public have to pay for [fol. 783] maple, beech and birch are reasonable, or unreasonable?

A. They are very reasonable.

Q. State whether or not you are familiar with the prices of the rough lumber, and the cost of manufacturing it.

A. Yes, sir, I am.

Q. And your testimony, that the prices are and have been reasonable is based upon your knowledge of costs, and your manufacturing operations before?

A. Yes, sir.

Q. And the price of rough lumber?

A. Yes sir."

The quotations that we received and that have been put in evidence are typical of our experience since we have been buying maple, beech and birch flooring. I am familiar with the market condition of maple flooring in 1920. Part of 1920 was a buyer's market and part of it was a seller's market. 1921 was a buyer's market. Quotations varied widely both during 1920 and 1921. I bought some factory maple flooring for as low as \$16.00 delivered in Milwaukee.

Cross-examination.

By Mr. Thompson:

The exhibits that have been put in evidence represent all the inquiries and quotations that we were able to find. There might perhaps be some more. When we buy flooring or any other item we select from large lists which we have in the office the manufacturers to whom we shall send out inquiries. We do not send out inquiries to every one on the list. Our list of manufacturers of maple beech and birch flooring contains more than 100 names. We do not [fol. 784] send any inquiry to every one on the list, but select from 10 to 20 concerns. G. H. Tennant Company has a maple flooring factory in Minneapolis; Charles Horn Lumber Company are Chicago brokers. E. Bartholomew has a big warehouse in Chicago. Mason-Donaldson Lumber Company are flooring manufacturers at Rhinelander, Wis. August Beck & Co. are flooring manufacturers of Milwaukee. Dwight Lumber Company are flooring manufacturers at Detroit. J. C. Hill is a flooring manufacturer of St. Paul, but he doesn't run the factory under his own name. Paul Knolk is a broker at Milwaukee. I believe he sells for the Wisconsin Land & Lumber Co. The Morgan Lumber & Manufacturing Company is an oak concern at Morgan City, Tenn. The M. B. Farren Lumber Company manufacture oak and maple flooring at Cincinnati. J. O. Nessen Lumber Company are wholesalers at Chicago. C. Z. Beard is a Chicago broker and I think he sells Kneeland-McLurg Lumber Company's stock. L. E. Leach & Co. are manufacturers with plants at Chicago and Cairo, Ill. McKey Bros. are manufacturers of Memphis, Tenn. Ward Bros. are located at Big Rapids, Mich. Long-Bell Lumber Company have an oak flooring factory at Kansas City, and are the largest lumber company in the world. National Hardwood Flooring Company manufactures oak flooring at Nashville, Tenn. Mobray & Robinson manufacture oak and soft maple flooring at Cincinnati. Memphis Hardwood Flooring Co. manufacture oak at Memphis.

Redirect examination.

By Mr. Darby:

The automobile manufacturers and others take the cream of the rough maple, beech and birch lumber. To supply their large demands they have forced up the price of rough lumber. They forced it clean out of sight, except on real low grade stock, that is, [fol. 785] No. 3, and you cannot make flooring out of that. They drove that down to nothing. You cannot get the price you paid for the timber for it. It is selling at from \$5.00 to \$10.00 at the mill now, dry stock, and you can't sell it at that price. This has forced the No. 1 rough lumber to a point where it is practically impossible to use it in the manufacture of flooring. Flooring stock is made mostly of No. 1 Common and the ripping grade of No. 2

Common. Prices of No. 1 and No. 2 Common have been exorbitant. Every sawmill cuts his maple, beech and birch logs into thick stock because the automobile manufacturers pay more for such stock. With the automobile manufacturers, it is not a question of price, but simply whether they can get the quantity they want.

[fol. 786] DEPOSITION OF IRWIN W. HAACK, TAKEN, PURSUANT TO STIPULATION, AT CHICAGO, ILLINOIS, ON OCTOBER 20TH, 1923

Direct examination.

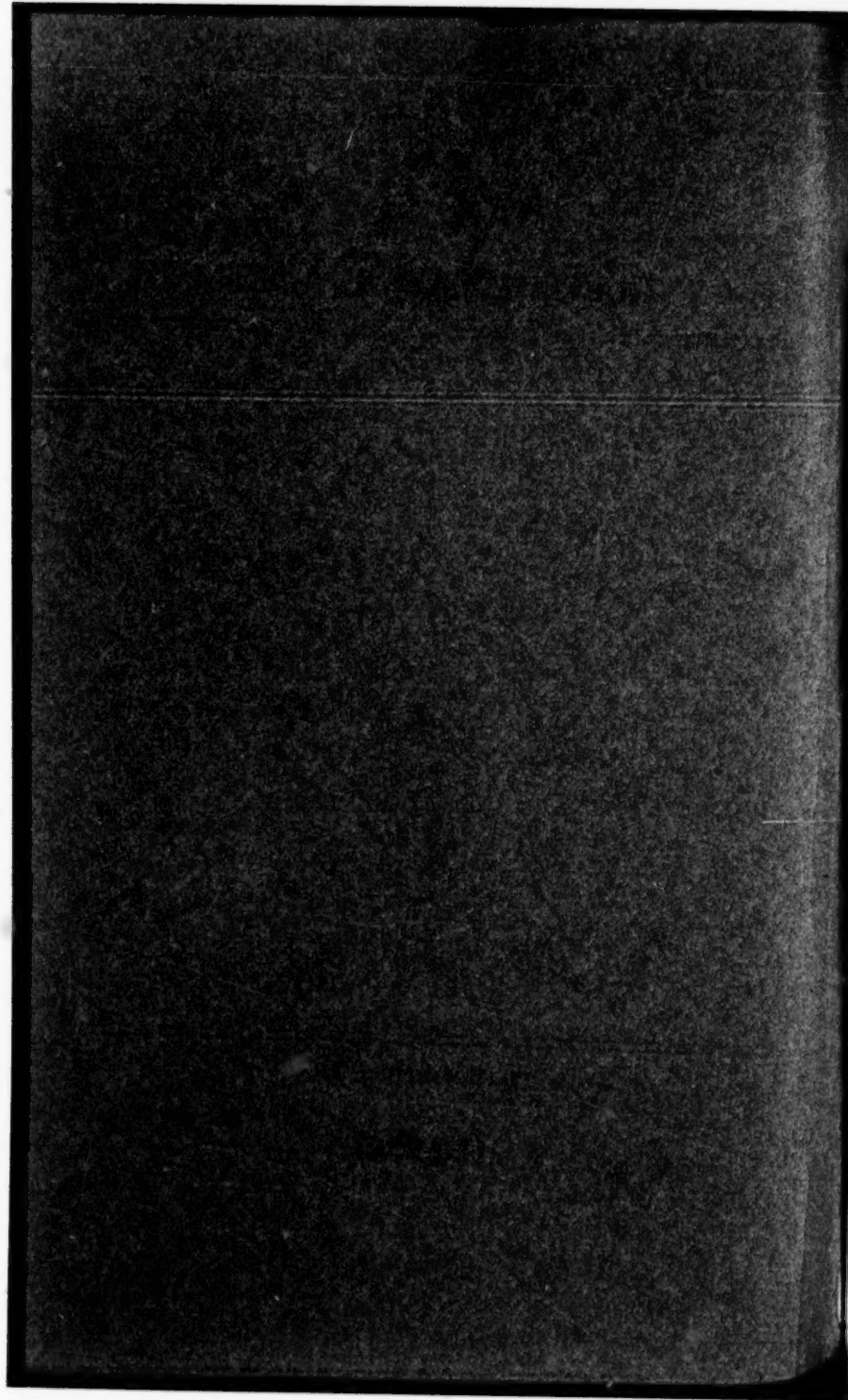
By Mr. Darby:

I live at Milwaukee, Wisconsin, and am the secretary of Mr. Koerble and Assistant Purchasing Agent for John Schroeder Lumber Company. Most of the tabulations that have been introduced in evidence are in my handwriting. When Mr. Koerble wanted to purchase flooring, he would dictate an inquiry to me and I would then send it out to different companies. When Mr. Koerble received the quotations he would hand them to me, whereupon I would tabulate them, after which they were checked by Mr. Koerble and me. Orders were given on the basis of those quotations in the ordinary course of business. I have been with the John Schroeder Lumber Company for the past four years, during all of which time I have been familiar with the prices of maple, beech and birch flooring. During all the time that I have been with the Company the prices received from various manufacturers varied about as they do in the tabulations that have been received in evidence. There never was a time when all the prices were identical for the different grades. From my experience I should say that there has been competition among the different manufacturers of maple, beech and birch flooring for the Milwaukee business, because there always has been quite a variance in prices. Ordinarily the prices of maple, beech and birch flooring varied as widely as did the prices for other lumber products. The tabulations that were received in evidence during the examination of Mr. Koerble are true and correct.

[fol. 787] Cross-examination.

By Mr. Thompson:

I did not keep track of the prices of maple, beech and birch flooring other than through the inquiries that were introduced in evidence during the examination of Mr. Koerble. I wrote most of the inquiries that were sent out while I was there. What I have testified to regarding the prices is based upon those exhibits.



(80,230)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 920

MAPLE FLOORING MANUFACTURERS ASSOCIATION, W. D.
YOUNG & COMPANY, MITCHELL BROTHERS COMPANY,
ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF MICHIGAN

VOLUME II

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IN THE
DISTRICT COURT OF THE UNITED STATES, WESTERN
DISTRICT OF MICHIGAN

Equity. No. —.

UNITED STATES OF AMERICA, Plaintiff,

v.

MAPLE FLOORING MANUFACTURERS ASSOCIATION et al.,
Defendants

PETITION—Filed March 5, 1923

VOLUME II

[fol. 788] DEPOSITION OF EARL BARTHOLOMEW, TAKEN, PURSUANT
TO STIPULATION, AT CHICAGO, ILLINOIS, ON OCTOBER 19, 1923

EARL BARTHOLOMEW, being duly sworn testified as follows:

Direct examination.

By Mr. Darby:

I live at River Forest, Illinois, a suburb of Chicago, and am the president of E. Bartholomew Hardwood Company, which handles oak and maple flooring and hardwood lumber. I have been in the lumber business since 1889 and have been purchasing maple, beech and birch flooring during the last eight or ten years. The E. Bartholomew Hardwood Company has been in existence since 1921. Prior to that time I was manager for the Nashville Hardwood Flooring Company of Nashville, Tenn., which conducted a branch here in Chicago. They came here in about 1914. They handled about the same stuff that we do now, namely, oak flooring, lumber, etc., and it was about that time that we started to buy maple flooring in car lots. As manager for the Nashville Hardwood Flooring Company, I bought maple flooring in car lots from 1915 until 1921, when the E. Bartholomew Hardwood Flooring Company was organized. During all the time above mentioned and since the organization of the E. Bartholomew Hardwood Company I have bought annually large quantities of maple, beech and birch flooring. During 1922 I bought about 2,000,000 feet. Since 1914 the annual average would be about a million and a half feet. My company does not manufacture maple, beech and birch flooring. We are wholesalers and buy everything that we sell from manufacturers. A good portion of the

maple, beech and birch flooring that we buy is distributed through our warehouse here in Chicago. We ship as far east as Maine and as [fol. 789] far west as California. We have shipped some stuff into Northern Michigan and as far south as Alabama. We sell largely through retail lumber dealers and occasionally to large manufacturing concerns direct who buy either for the construction of new floors or for repairs. We keep in touch with market conditions with respect to price, largely by means of sending out inquiries. If we require certain kinds of maple flooring or our stock is running low in the warehouse we send out an inquiry to find out where flooring can be bought to the best advantage. Sometimes we buy a large amount of stock to be shipped into the warehouse from time to time as needed. The largest purchases I should say would result from inquiries sent out by us to manufacturers.

Defendants' Bartholomew Exhibit 1 for identification was a general inquiry that was sent out by us on April 12th, 1923, to the I. Stephenson Company, W. D. Young & Company, J. W. Wells Lumber Company, Holt Hardwood Company, Ward Bros., Flanner-Steger Land & Lumber Co., Northwestern Cooperage & Lumber Co., and the West Michigan Flooring Co., and the quotations that we received in response thereto. On the 13/16th by inch and a half Factory maple flooring, delivered at Chicago, we received the following quotations per thousand feet:

J. W. Wells Lumber Co., \$39.00.

Holt Hardwood Co., 25.00 f. o. b. cars Oconto, Wis. (Freight rate to Chicago would make a delivered price at Chicago \$27.75.)

I. Stephenson, \$45.50.

W. D. Young and Co. and Ward Bros. were unable to quote on that item.

On the 13/16 by 2¼ inch face Factory we received the following quotations:

[fol. 790] I. Stephenson.....	\$60.50
Ward Bros.....	61.25

The other manufacturers were not able to quote on that item.

On the 1 1/16—2¼ inch Factory we received the following quotations:

W. D. Young & Co.....	\$59.00
Holt Hardwood Co.....	55.00

the others not quoting.

On 1 1/16 by 3¼ Factory maple flooring we received the following quotations:

W. D. Young & Co.....	\$64.50
J. W. Wells Lumber Co.....	64.50

On that inquiry we purchased the 13/16 by 1½ inch Factory flooring from the Holt Hardwood Co. at \$25.00 f. o. b. cars Oconto. I think the freight rate from Oconto, Wis., to Chicago, was 14½ cents

per hundredweight, which would equal about \$2.75 a thousand feet, and make the flooring cost us in Chicago, \$27.75. The letters that we received from the various manufacturers above mentioned were received in the ordinary course of business, in response to an inquiry that was sent out in the ordinary course of business.

(Defendants' Bartholomew's Exhibit 1 for identification was received in evidence.)

Defendants' Bartholomew Exhibit 2 for identification are copies of orders that we sent to William Horner of Reed City and Cummer-Diggins Company of Cadillac, Mich. As shown by said orders, on September 26th, 1922, we bought of William Horner 13/16 by inch and a half Clear maple flooring at \$80.75 and 13/16 by 2¼ inch Clear maple flooring at \$85.50 f. o. b. cars Reed City. On September [fol. 791] 5th, 1922, we bought from Cummer-Diggins Company 13/16 by inch and a half Clear maple flooring at \$88.00 and 13-1/6th by 2¼ inch Clear maple flooring at \$93.00 f. o. b. Cadillac. The freight from Reed City to Chicago is identical with the freight rate from Cadillac to Chicago. We made the purchases above mentioned. Both the purchases above mentioned were made for stock to be placed in our warehouse as is indicated by the words, "Purchase Order No. 147-S" placed on the William Horner order and the words, "Purchase Order No. 145-S" placed on the Cummer-Diggins order. I understand that both William Horner and Cummer-Diggins Company were members of the defendant Maple Flooring Manufacturers Association at the time said orders were placed.

(Said exhibit was received in evidence.)

Defendants' Bartholomew Exhibit No. 3 for identification is composed of answers to an inquiry sent out by us on July 2d, 1923. Our inquiry was for quotations on 13/16 by 2¼ inch Factory maple flooring. The quotations that we received were as follows:

Flanner-Steger Land & Lumber Co.....	\$49.00
Wisconsin Land & Lumber Co.....	52.50
R. Connor Company.....	55.00
Ward Bros.....	54.00

The prices above mentioned were net to us delivered at Chicago. I do not think that either the R. Connor Company or Ward Bros. were members of the Maple Flooring Manufacturers Association at the time the foregoing quotations were made. The letters containing said quotations above mentioned were received by us in the ordinary course of business in response to a bona fide inquiry addressed to the manufacturers in question.

(Said exhibit received in evidence.)

[fol. 792] Defendants' Bartholomew Exhibit 4 for identification is a copy of our order No. 234 placed with William Horner of Reed City on January 22d, 1923, for 45,000 feet of inch and sixteenths

by 2¼ inch face Factory maple flooring delivered at Wellford, South Carolina. The words, "Less 5 per cent" appearing on the face of said order mean that we were entitled to a discount of 5 per cent on the net amount of invoice after deducting freight. Our inquiry was originally for inch and sixteenths by 3¼ inch face Factory maple flooring, delivered f. o. b. cars Spartanburg, South Carolina, and we received the following quotations:

Kneeland-Bigelow Co.,	\$49.25, less \$2.00 commission.
Kerry & Hanson Flooring Co.,	52.00, " " "
Robins Flooring Co.,	53.00, " " "

In response to the original inquiry Horner stated to us that he was unable to quote on inch and sixteenths by 3¼, but that he was able to give us an inch and sixteenth by 2¼ at \$44.00 per thousand, less five per cent from net amount of invoice, and as a result of his offer we decided to use the 2¼ inch face instead of the 3¼ inch face, and the order was accordingly placed with Horner.

(Said Exhibit received in evidence.)

Defendants' Bartholomew Exhibit 5 for identification is a form letter that was addressed to J. W. Wells Co., Robbins Flooring Co., Wisconsin Land & Lumber Co., Kerry & Hanson Flooring Co., R. Connor Co., I. Stephenson Co., Ward Bros., Holt Hardwood Co., W. D. Young & Co., Strable Lumber & Salt Co., Flanner-Steger Land & Lumber Co. on July 2d, 1923, asking best prices f. o. b. mills or Chicago rate and commissions. Attached to said inquiry are letters from the different manufacturers containing quotations. On the [fol. 793] 13/16 by 3¼ inch face Factory flooring we received the following quotations:

Kerry & Hanson Flooring Co.	\$63.00
J. W. Wells Lumber Co.	52.50

On 13/16 by 4 inch factory maple flooring we received the following quotations:

W. D. Young & Co.	\$57.50
Kerry & Hanson Flooring Co.	63.00

On inch and sixteenth by 2¼ inch face factory flooring we received the following quotations:

J. W. Wells Lumber Co.	\$52.00
Holt Hardwood Co.	52.50

On the inch and sixteenth by 3¼ inch face Factory flooring we received the following quotations:

Kerry & Hanson Flooring Co.	\$63.00
J. W. Wells Lumber Co.	57.50
Holt Hardwood Co.	52.50

All the quotations above named were delivered price at Chicago. We received no other quotations in response to that inquiry.

(Said Exhibit received in evidence.)

Defendants Bartholomew Exhibit 6 is a copy of our order No. 299 for a car of 13/16 by 1½ inch No. 1 Factory maple flooring placed with the Strable Lumber & Salt Company through N. J. Clears Lumber Company at Chicago. Said order was placed on April 12th, 1923. This car was bought at \$31.00 per thousand f. o. b. cars Saginaw, Michigan, and was shipped to Norwood, North Carolina. Before placing the order above mentioned we had addressed inquiries to other manufacturers and in response thereto we received a quotation from the Robbins Flooring Company of \$36.00 f. o. b. cars Rhinelander, Wis. Accordingly, we placed the order with the Strable Lumber & Salt Company. The price was f. o. b. cars mill [fol. 794] and we assumed the freight from mill to Norwood, North Carolina. I think the freight rate from Saginaw, Michigan to Chicago is about the same as the freight rate from Rhinelander, Wis., although the Rhinelander rate might be a little less. The shipment above mentioned, however, was not brought to Chicago. It was shipped direct to North Carolina and the freight rate from Saginaw, Michigan, to North Carolina, would be a little less than the freight rate from Rhinelander, Wisconsin.

(Said Exhibit received in evidence.)

Defendants' Bartholomew Exhibit 7 for identification is an inquiry that we sent out on July 19th, 1923, and the quotations that we received in response thereto. On ¾ by inch and a half and 2 inch Clear maple flooring we received the following quotations:

W. D. Young & Co.	\$67.00
I. Stephenson	68.00
Kerry & Hanson Flooring Co.	60.00
Grayling, on 1½ inch and \$65.00 Grayling on 2 inch.	
Northwestern Cooperage & Lumber Co.	67.50
William Horner	68.00

All the quotations above mentioned were, delivered at Chicago, except where otherwise stated.

On the ¾ by inch and a half and 2 inch No. 1 maple flooring we received the following quotations:

W. D. Young & Co.	\$47.00
I. Stephenson	53.00
Kerry & Hanson	50.00
Grayling.	
J. W. Wells Lumber Co.	40.00
Northwestern Cooperage & Lbr. Co.	47.50
William Horner	42.50

The quotations above mentioned were delivered at Chicago except as otherwise stated. There were six members of the defendant

Association who were unable to quote. At that time the freight from Grayling, Michigan, amounted to \$2.25 per thousand feet, [fol. 795] accordingly increase the quotations made by Kerry & Hanson.

(Said Exhibit received in evidence.)

Defendants' Bartholomew Exhibit 8 for identification is a copy of our order 176-S of October 21, 1922, covering a car of 20,000 feet of 13/16 by 2¼ inch face No. 1 Factory maple flooring at \$35.00 per thousand, f. o. b. cars Chicago, sent to the Flanner-Steger Land & Lumber Company, Blackwell, Wisconsin. That order was placed by us in the ordinary course of business and the correspondence relating to the said order is attached thereto.

"Mr. Darby: We will reserve offering this document in evidence until after we have placed another witness on the stand to identify another order given on or about the same day by another purchaser to another member of the defendant Maple Flooring Manufacturers Association."

Defendants' Bartholomew Exhibit 9 for identification is a copy of our order No. 223 of November 23d, 1922, for 15,000 feet of inch and a sixteenth by 2¼ inch face Factory maple flooring, at \$35.00 per thousand f. o. b. cars Chicago, sent to William Horner, Reed City, Mich. Attached to said order are communications that passed between us and William Horner with reference thereto. Said order was placed by us in the ordinary course of business.

"Mr. Darby: Defendants reserve the right to offer the Exhibit in evidence later on, for the reasons stated in connection with the preceding Exhibit."

Our company was not ready to do much buying until some time in the first part of 1922. The quotations that have been introduced in evidence are typical of the quotations that we have received in the conduct of our business. They are also typical of the quotations that [fol. 796] were received by me as Manager of the Nashville Hardwood Flooring Company from 1914 until I started my own business in 1921.

"Q. Would you say from your knowledge of conditions here in Chicago that there is or has been any uniform price for maple, beech or birch flooring?

A. Well, as a rule I should judge that there would be a spread of five per cent on most items.

Q. On most items?

A. Yes, sir, between the high and the low points.

Q. Sometimes it would vary more and sometimes less, but as an average it would be about a five per cent difference between the high and the low of the different manufacturers?

A. Yes, sir.

Q. And does that difference include members of the defendant Maple Flooring Manufacturing Association?

Oh, yes.

Q. Is there any more uniformity of price among the members of the defendant Maple Flooring Manufacturers Association than there is among non-members?

A. Well, I could not say as there is. That depends altogether on conditions.

Q. Explain what you mean, please?

A. Frequently the prices of the Association members are higher than those of non-members, and just the reverse occasionally; due to conditions, I mean, or the quantities of the various items that they manufacture or might have on hand at a certain time.

Q. And then there will be the same difference among members of the Association?

[fol. 797] A. Yes, sir.

Q. And sometimes the quotations that you receive from non-members are higher than the quotations that you receive from the members of the Association, are they not?

A. Yes, sir, sometimes.

Q. And whom do you prefer to deal with, as a general rule?

A. We would rather buy from the Association members, for the reason that there is uniformity of grade; and then in case of dispute with a customer there is a recourse of inspection, at any destination.

Q. State whether or not you have found the grades of flooring manufactured by the different members of the Association satisfactory?

A. They have been very satisfactory.

Q. State whether or not you have found the re-inspection service maintained by the defendant Maple Flooring Manufacturers Association satisfactory?

A. Yes; they have given prompt service, and so far as we know it has been satisfactory to both buyer and seller.

Q. Do you consider that that service is efficiently and honestly and fairly maintained?

A. Yes, we believe so."

[fol. 798] We prefer to buy our Factory flooring from the Cummer-Diggins Company. We also like to buy our Clear and No. 1 from Cummer-Diggins Company because of the way they bundle it. The Cummer-Diggins Company use wire whereas some other manufacturers use twine, and while their flooring is just as good, we prefer to handle flooring bound with wire because it holds better and is more satisfactory to handle. We have bought a great deal of flooring from Cobbs & Mitchell. They make beautiful flooring, in fact, they make it too good. When I was associated with other concerns I bought a great deal of flooring from Cobbs & Mitchell.

"Q. You mentioned, I believe, one experience that you had with Cummer-Diggins Company. State what that was,—that you told me about.

A. Well, this year we bought from Cummer-Diggins quite a bunch of flooring in Clear, No. 1 and Factory, being I think, along the first of the year, around the first of the year, at \$110 a thousand.

Q. How large a quantity?

A. As I remember there was about 150,000 feet in this lot.

Q. And that was for future delivery, was it not?

A. Yes, sir.

Q. Now, go on.

A. And they afterwards changed their price to meet the conditions, to \$105, and later to \$100, and as I remember a little later on, to \$95—voluntary on their part.

Q. In other words, they reduced the price on future deliveries to you, in accordance with the market at that time?

A. Yes, sir.

Q. Notwithstanding the fact that they had your contract for the whole lot at \$110?

A. Yes, sir.

Q. And you say they did that voluntarily?

A. Absolutely.

[fol. 799] "Q. You did not ask them to do it?"

A. Oh, no.

Q. He mentioned that the market was softer or lower, and he thought that in fairness to you you should have the benefit of it?

A. That was the idea."

Very frequently during the past ten or twelve years after receiving quotations from one member of the Association at a low price and upon being quoted higher prices by another member of the Association I would inform the latter of the prices quoted by the first member, whereupon the latter would reduce his price in order to meet competition. That sort of thing is common between buyer and seller. I consider that the market here in Chicago on maple, beech and birch flooring is an absolutely competitive market. There is also competition between our company and other wholesalers here in Chicago. We could not maintain our business here in Chicago so well if there were a uniform price among the manufacturers of maple, beech and birch flooring. In order to meet the competition that we encounter we must find a manufacturer who will sell a little lower than another. We like to have competition both ways. I am of the opinion from my knowledge of conditions here in Chicago during the past twelve years that competition does exist and has existed here among all the manufacturers of maple, beech and birch flooring whether members of the defendant Association or not. The spread between the high and low on maple, beech and birch flooring is as large as the spread on other hardwood floorings or any other lumber commodities in which I deal. I think it is immaterial to the members of the defendant Association whether they quote us f. o. b. mills or f. o. b. Chicago, or f. o. b. any other point. In handling our own business we prefer to get quotations f. o. b. mill [fol. 800] and have never experienced any difficulty in getting quotations on that basis. At times quotations are made to us subject to commissions and at other times the quotations are net. In buying lumber, as a rule there is no commission given to wholesalers. In oak flooring the commission is usually \$2.00 per thousand, or five per cent or sometimes three per cent. In buying maple flooring, whether they are members of the Association or non members, the

commission varies. Sometimes they have a dollar and a half and at other times two dollars a thousand. Sometimes the quotations are net.

Cross-examination.

By Mr. Thompson:

I have known of the existence of the different Maple Flooring Manufacturers Association ever since I have been buying maple flooring. As a rule, I have known who were members and who were not members. In sending out inquiries we address them to the manufacturers who we think would have the stock desired. Some mills make items that are not made by others. Sometimes we send out a general inquiry addressed to all manufacturers, at other times an inquiry is addressed to only one or two or a few. At times we place orders direct without sending out general inquiries. We do this from our past experience and knowledge of the stock that is carried and in accordance with our best judgment as to what the market is. When we feel that the price offered us is one that we can use to advantage, we enter into the contract without obtaining quotations from other firms. If we buy f. o. b. mill we can ship the flooring direct to wherever we please. Sometimes we do not know where we are going to ship flooring when we place the order. The destination may be changed, and if the price is f. o. b. mill the [fol. 801] seller is not concerned with that. For instance, if we ask the price f. o. b. St. Louis rate, and later send the shipment to Dallas, the seller will credit us with the rate as far as St. Louis and we assume the balance. I should judge that we send out inquiries perhaps once a month. We are always sending out inquiries to mills we do business with. We are doing this all the time, but frequently it is well to have a general inquiry in order to locate any items that the mills might want to sell. Sometimes it is difficult to locate just what we want and then the inquiry would be sent to a larger number of manufacturers. If we think that the item will be easy to locate we just get a few prices and then place the order. The exhibits that have been identified and received in evidence do not represent all the inquiries that we have sent out during the period covered by them.

Redirect examination.

By Mr. Darby:

Some of the manufacturers maintain agencies here in town. We are in constant touch with them, receiving quotations over the telephone, price lists, etc. I therefore know what other people are quoting from persons we are trying to sell. We are also informed by our buyer at what price some one else has offered to him the flooring he desires. We very frequently place orders with the manufacturers on an offer made because we are in touch with conditions and consider that the flooring offered is a good buy.

A. As I remember there was about 150,000 feet in this lot.

Q. And that was for future delivery, was it not?

A. Yes, sir.

Q. Now, go on.

A. And they afterwards changed their price to meet the conditions, to \$105, and later to \$100, and as I remember a little later on, to \$95—voluntary on their part.

Q. In other words, they reduced the price on future deliveries to you, in accordance with the market at that time?

A. Yes, sir.

Q. Notwithstanding the fact that they had your contract for the whole lot at \$110?

A. Yes, sir.

Q. And you say they did that voluntarily?

A. Absolutely.

[fol. 799] Q. You did not ask them to do it?

A. Oh, no.

Q. He mentioned that the market was softer or lower, and he thought that in fairness to you you should have the benefit of it?

A. That was the idea."

Very frequently during the past ten or twelve years after receiving quotations from one member of the Association at a low price and upon being quoted higher prices by another member of the Association I would inform the latter of the prices quoted by the first member, whereupon the latter would reduce his price in order to meet competition. That sort of thing is common between buyer and seller. I consider that the market here in Chicago on maple, beech and birch flooring is an absolutely competitive market. There is also competition between our company and other wholesalers here in Chicago. We could not maintain our business here in Chicago so well if there were a uniform price among the manufacturers of maple, beech and birch flooring. In order to meet the competition that we encounter we must find a manufacturer who will sell a little lower than another. We like to have competition both ways. I am of the opinion from my knowledge of conditions here in Chicago during the past twelve years that competition does exist and has existed here among all the manufacturers of maple, beech and birch flooring whether members of the defendant Association or not. The spread between the high and low on maple, beech and birch flooring is as large as the spread on other hardwood floorings or any other lumber commodities in which I deal. I think it is immaterial to the members of the defendant Association whether they quote us f. o. b. mills or f. o. b. Chicago, or f. o. b. any other point. In handling our own business we prefer to get quotations f. o. b. mill [fol. 800] and have never experienced any difficulty in getting quotations on that basis. At times quotations are made to us subject to commissions and at other times the quotations are net. In buying lumber, as a rule there is no commission given to wholesalers. In oak flooring the commission is usually \$2.00 per thousand, or five per cent or sometimes three per cent. In buying maple flooring, whether they are members of the Association or non members, the

commission varies. Sometimes they have a dollar and a half and at other times two dollars a thousand. Sometimes the quotations are net.

Cross-examination.

By Mr. Thompson:

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Redirect examination.

By Mr. Darby:

Some of the manufacturers maintain agencies here in town. We are in constant touch with them, receiving quotations over the telephone, price lists, etc. I therefore know what other people are quoting from persons we are trying to sell. We are also informed by our buyer at what price some one else has offered to him the flooring he desires. We very frequently place orders with the manufacturers on an offer made because we are in touch with conditions and consider that the flooring offered is a good buy.

When you and Mr. Keehn were at my place of business some eight or ten days ago, you asked us to have some of our clerks assemble instances where general inquiries had been sent out, and I did so and gave them to Mr. Keehn. There were not many instances where a general inquiry had been sent out. What I gave [fol. 802] you have been introduced in evidence. The large bunch of single quotations you hand me were taken from our files.

"Mr. Darby: We do not want to introduce them in evidence unless counsel for the Government wants us to do so. I may say that we compared them with orders placed with other manufacturers, and we could not match them up so far as dates were concerned. For that reason we have not used the single quotations.

Mr. Thompson: Oh, I do not want those. I just want to get the general idea as to how many general inquiries were sent out.

The Witness: The minimum carload of flooring contains 20,000 feet of 13/16 2 1/4" face. We have had cars of 3/8 inch flooring that contained as much as 80,000 feet. The spread of \$4.00 per thousand on a carload of 80,000 feet will amount to \$320. In 1920 flooring was very hard to get and prices were abnormal. There was no steady market at that time. There was a big demand for flooring and all other lumber products. In 1921 there was a big break in prices of most lumber products and especially of maple, beech and birch flooring. The variation in prices in both 1920 and 1921 were greater than usual. During 1920 there was such a strong demand for flooring that it was a question of deliveries and not the price. Buyers were bidding for flooring for certain deliveries, delivery being more important than price. In 1921 the manufacturers of flooring and lumber products generally were trying to unload. It was a season of liquidation and there was a big drop in prices during that year all along the line. As a consequence there was a greater spread between the prices quoted by the manufacturers generally of maple, beech and birch flooring than other products.

[fol. 803] DEPOSITION OF ALEXANDER B. CLANEY, TAKEN PURSUANT TO STIPULATION, AT CHICAGO, ILLINOIS, ON OCTOBER 20, 1923

ALEXANDER B. CLANEY, being first duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

I am 50 years of age and have been in the lumber business for about thirty years. The name of my present firm is the Lord & Bushnell Company, in which I am a stockholder and of which I am the treasurer. The Lord & Bushnell Company are wholesalers and retailers of lumber products. We do not manufacture. We handle

from about 60 to 80 million feet a year, including maple flooring. I think we handle about a million feet of maple flooring a year. We buy every week and commission men are calling us up every day wanting us to buy and giving us the market. We place frequent inquiries with commission men and sometimes we deal direct with the manufacturers. The Lord & Bushnell Company was organized I think in 1871. I have been associated with the Company for about five years. Before that I was with the Thornton-Clancy Lumber Company, who did about the same business as the Lord & Bushnell Company. During the last ten or twelve years I have bought from W. D. Young & Co., Wisconsin Land & Lumber Co., the I. Stephenson Co., Cummer-Diggins Co., Holt Hardwood Co., Strable Lumber & Salt Co., Foster-Latimer Lumber Co., West Michigan Flooring Co., J. W. Wells Lumber Co., Northwestern Cooperage & Lumber Co., North Branch Flooring Co.; Flanner-Steger Land & Lumber Co., I think; Bigelow-Cooper Co. and Kneeland-McLurg Lumber Co. I do not think that there was ever a time when there has been a uniform price for maple flooring among the persons that I have dealt with. In fact, I know there never was a uniform [fol. 804] price. There was always some difference in the price of some manufacturers, two, three, four or five. There may have been some with the same price, but there was always some difference, never have we got a uniform price from everybody. We buy our stuff delivered. By so doing we know what it is going to cost us, and we have much less bother looking up the freight rate. The price at which we have bought maple flooring and the quotations that we have received from maple flooring manufacturers have varied, sometimes more and at other times less, than would the quotations on other lumber that I have bought during that period,—invariably more because the price of flooring is higher than the ordinary lumber that we carry. It is a better grade of lumber and is used less and as a consequence the flooring is higher in price. We handle oak flooring. I should say that the prices of maple flooring that we get from the manufacturers above named have varied just about the same as the prices of oak flooring. Competition exists and has existed among the manufacturers from whom we have purchased maple flooring, at least so far as Lord & Bushnell are concerned. I do not think that a conspiracy or combination or agreement among the manufacturers from whom we have bought maple flooring, to establish and maintain uniform prices, could exist without our knowing it. We are in constant touch with the market every day. We have never had occasion to ask for reinspection except on one car, which was reconsigned by the Holt Hardwood Company and the matter was satisfactorily adjusted with them. Our dealings with the manufacturers above mentioned have always been very satisfactory. In no instance have any of them ever attempted to cancel a contract or [fol. 805] to get higher prices after making a sale to us for future delivery when the price was later on advanced. Once we placed an order for about 350,000 feet of 2¼ inch Clear maple flooring, and I think the price was then \$56.00 a thousand. The manufacturer carried

that order along for more than a year before we required shipment; and I am sure the price went up from \$56.00 to about \$225 or \$235 a thousand before the order was completely shipped. Delivery was made without complaint. Bigelow-Cooper Company was the manufacturer that made the shipment. They took their medicine like a man and delivered beautiful flooring without one word of complaint. The people who received the flooring were very technical, but they had no complaint to make with respect to this flooring. The flooring in question went into the Western Electric Company plant at 52d and 22d Streets.

Defendants' Clanev Exhibit 1 for identification is a formal order which we placed with the Holt Hardwood Company at Oconto, Wisconsin, on October 27, 1922, for 25,000 to 30,000 feet, 13/16 by 2¼ inch face Factory maple flooring at \$39.50 per thousand, f. o. b. cars Chicago.

(Said exhibit received in evidence.)

"Mr. Darby: In order to keep the record straight, I will read into the record Defendants' Bartholomew Exhibit 8 for identification, which is an order given on October 21st, 1922, by E. Bartholomew Hardwood Company of Chicago to the Flanner-Steger Land & Lumber Company, Blackwell, Wisconsin, for one car of 20,000 feet of 13/16 by 2¼ inch face No. 1 Factory maple flooring at \$35.00 a thousand, f. o. b. cars Chicago.

Defendants' Clanev Exhibit 2 for identification is an order placed on November 22d, 1922, with the Grossman Lumber Company, [fol. 806] Grand Rapids, Michigan, for 20,000 feet of 13/16 by 2¼ inch face Factory maple flooring at \$37.50 f. o. b. cars Chicago."

(Said Exhibits received in evidence.)

"Mr. Darby: In order to make clear the purpose for which the last exhibit is introduced, I will read the substance of Defendants' Bartholomew Exhibit No. 9 into the record. This exhibits purports to be an order that was placed on November 23d, 1922, by E. Bartholomew Hardwood Company of Chicago with William Horner of Reed City, Michigan, for 15,000 feet of inch and sixteenth by inch and a quarter face No. 1 Factory maple flooring at \$35.00 per thousand f. o. b. cars Chicago."

Cross-examination.

By Mr. Thompson:

We make purchases of maple flooring whenever our demands require it. I could not say how often that is—sometimes every week, sometimes every month. Almost every day we keep in touch with prices—that is, two or three times a week by the commission men calling us up and wanting to sell us. They give us prices. Some commission men call at our office, others call us by telephone, sometimes two or three a day. Sometimes we buy from commission

men without making any further inquiry, at other times we do not. If we are not posted on the market and we don't think the prices quoted are right, we will send an inquiry to different manufacturers. Sometimes instead of sending out an inquiry to manufacturers, we ask other commission men, if we are not satisfied with the prices previously quoted us by commission men. If we wish to make a further inquiry among the manufacturers we send out letters. We send out general inquiries among the manufacturers about every two or three months. We do not make tabulations of the quotations received. We select the lowest or the next to the lowest quite frequently and dispose of the others. In making general inquiries I should say, without looking it up, that we address them to all the manufacturers I mentioned on my direct examination. When I testified that I had never been quoted uniform prices on the same day, I referred to the results of these general inquiries and the quotations that were made me by commission men. I do not think there were ever instances where on the same day two or three commission men would all quote the same price. Probably two of them would and probably two or three of them wouldn't. Sometimes two or three of them would quote the same price. I base my answers to the questions as to whether there was competition in selling flooring and as to whether there could possibly be a combination or conspiracy between the manufacturers of flooring upon this non-uniformity of prices about which I have testified.

[fol. 808] DEPOSITION OF ALBERT P. HAWLEY, TAKEN, PURSUANT TO STIPULATION, AT CHICAGO, ILLINOIS, ON OCTOBER 19TH, 1923.

ALBERT P. HAWLEY, being duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

I live a Chicago and am engaged in the lumber business. I have been engaged in the lumber business for about 30 years. My experience has been confined to retailing. I have never been connected with the manufacturing end. I am the vice-president of the Burns Lumber Company. We retail lumber, pine hardwood flooring, hemlock, and all kinds of lumber that go into the construction of buildings. We handle maple and oak flooring, but no beech or birch. I do the buying and general overseeing of the yard. We have two yards located here in Chicago. Most all of the lumber that we handle is disposed of here in Chicago. The Burns Lumber Company succeeded the John E. Burns Lumber Company. Our present company and its predecessors have been operating in Chicago for about 22 years, during all of which time I have been with one or the other of said companies. I should say that the present

company and its predecessor have during all the time above mentioned handled about three-quarters of a million feet of maple flooring annually, and from about 500 thousand to three quarters of a million feet of oak flooring annually. In the performance of my duties I have been in touch with the price of maple flooring in Chicago during the time above mentioned. When we are in the market I call up either several manufacturers or their salesmen and get their prices, listing them on cards. I have at various times received quotations from different manufacturers of maple flooring. [fol. 809] I know that there is now and has been an Association called the Maple Flooring Manufacturers' Association. Most always I have bought from members of that Association. We prefer to deal with them because we are pretty sure of getting what we buy, both as to grade and quantity, and usually we find their prices right. I am familiar with many of the names of the members of the Association and have received quotations from them either directly or indirectly. I have never received quotations or bought lumber from Ward Brothers or R. Connor Company. I do not remember that there was ever a time when there was not some variation in the prices quoted by different members of the Maple Flooring Manufacturers' Association. During all the time above mentioned I have dealt with some of the members of the Association and have received quotations from them. We have always found a variation in price. We might get the same price from two or three, but we have always had some variation. Some one was always willing to take a moderate price. We buy oak flooring. I would say that the prices that are quoted me by the members of the Maple Flooring Manufacturers' Association on maple flooring vary as widely as the quotations on oak flooring or other lumber products. I think that has been true as nearly as I can remember during the last twenty years. We have dealt with the Holt Hardwood Company of Oconto, Wisconsin, for about ten or twelve years. All other things being equal, we prefer to do business with said company. They have always taken care of our business. We are located on the same road, Chicago & Northwestern. Their shipments are very prompt and their price has always been right, and their grades are [fol. 810] good. Their treatment of us has been fine.

"Q. Would you say that the prices that you have paid for maple flooring during the period that you have mentioned have been fair and reasonable or unfair and unreasonable?

A. I would say they are very fair."

The paper marked Defendants' Hawley Exhibit 1 for identification contains a notation of a purchase of 475,000 feet of flooring from the Holt Hardwood Company on December 7th, 1922. There were 150,000 feet of 13/16 x 2 1/4 inch face No. 1 Factory maple flooring at \$37.50 per thousand; 25,000 feet of 13/16 by 3 1/4 inch face Factory flooring at \$40.00 a thousand; 150,000 feet of 13/16 by 2 1/4 inch Select flooring at \$87.50 per thousand and 150,000 feet of 13/16th by 2 1/4 inch clear at \$97.50. The flooring was for future delivery as ordered by us. The pencil memoranda to the right of

the prices made us by Holt Hardwood Company are the prices made us by some other manufacturer at about the time the order was placed with Holt. On the 2¼ inch Factory Holt quoted \$37.50; the other manufacturer quoted \$39.00. On the 3¼ inch Holt quoted \$40.00 and the other manufacturer quoted \$40.00. On the 2¼ inch select Holt quoted \$87.50 and the other manufacturer quoted \$89. On the 2¼ inch Clear Holt quoted \$97.50 and the other manufacturer quoted \$99.00. All the entries made on Defendants' Hawley Exhibit 1 were made on or about December 7th, 1922, in the ordinary course of business. I do not recall at this time what manufacturer made the quotations that have been noted in pencil opposite the quotations of the Holt Hardwood Company. I can say that we usually called on members of the Association for [fol. 811] quotations at that time. Defendants' Hawley Exhibit 1 for identification was taken from our current file where it has remained since December 7th, 1922. When you and Mr. Keehn were at my office some time ago you asked me whether I had any record showing purchases made in recent years. I found Defendants' Hawley Exhibit No. 1 and several others. I brought with me today all the cards that I was able to locate.

(Said Exhibit received in evidence.)

After placing this order for 150,000 feet of 13/16 by 2¼ inch face Factory maple flooring with Holt Hardwood Company on December 7th, 1922, at \$37.50 per thousand, to be shipped out as ordered by us, we had occasion to place another order for the same grade of flooring later on. Defendant's Hawley Exhibit 2 for identification is our order slip for 82,000 feet of 13/16ths-2¼ inch face Factory maple flooring at \$35.00 per thousand. There are no notations on said Exhibit showing the dates that various shipments were made. We did not order out the 82,000 feet under our standing order for 150,000 feet at \$37.50 because we entered into a contract with a buyer here in Chicago to furnish him 82,000 feet at a very low price. Our competition here in Chicago was such that we could not afford to pay the price that Holt had made us. We therefore wrote the Holt Hardwood Company a letter, copy of which is attached to said Exhibit, said letter reading as follows:

"December 15, 1922.

Holt Hardwood Co., Oconto, Wis.

GENTLEMEN: We have just sold a job that will require 82,000 ft. of 13/16 x 2¼ #1 factory Maple flooring, to be delivered probably in February. This is a 6-story building and they are probably [fol. 812] putting in the foundation at the present time. Of course, the time of delivery for the factory Maple will depend somewhat on the weather, but they expect to have the building under roof and practically completed by May first.

We had to meet very severe competition on this bill and want to buy this particular lot at \$35.00 f. o. b. cars Chicago. That price has been quoted by other concerns. Will you kindly let us know what you can do.

Regarding the other order that we sent you, we will let that stand as we gave it with the prices which you attached, although we were considerably disappointed at the raise.

Yours very truly, John E. Burns Lumber Co., by ———,
Vice Pres."

"Mr. Darby:

Q. Will you explain what you mean by the last paragraph that I have just read, expressing disappointment at the rate. What did you mean by that?

A. The previous order that we had given them was at a lower price than this. At that time they had raised their price, I do not remember how. And naturally we were disappointed.

Mr. Darby: I should like to read into the record a telegram which purports to be from Oconto, Wisconsin, dated December 20, 1922. (Reading:)

"Oconto, Wis., 11.01 a. Dec. 20, 1922.

J. E. Burns Lumber Co., 700 West Chicago Av., Chicago, Ill.:

Reference letter fifteenth will furnish factory at thirty five dollars.

Holt Hardwood Co."

Mr. Darby: Confirmation by letter from Holt Hardwood Co., dated December 20th, 1922. (Reading:)

[fol. 813]

"Holt Hardwood Company

Dec. 20th, 1922.

'John E. Burns Lumber Co., Chicago, Ill.

GENTLEMEN: Confirming our telegram of this morning, we are pleased to advise that we can furnish the 82,000' of 13/16 x 2 1/4" face factory Maple flooring at \$35.00 per thousand, f. o. b. cars Chicago as suggested in your letter.

Hoping that you can favor us with the order, we remain,

Yours truly, Holt Hardwood Company. C. F. De Witt."

We let our original order for 150,000 feet at \$37.50 stand and ordered out the flooring later on.

Defendants' Hawley Exhibit 3 for identification is one of our current purchase slips for hardwood flooring placed with the Holt Hardwood Company of Oconto on August 17th, 1922, for 150,000 feet of 13/16 by 2 1/4 inch face Select maple flooring; 75,000 feet of 2 1/4 inch Clear and 50,000 feet of 2 1/4 inch Factory. The pencil notation in the upper right hand corner reading, "Letter 8-17-22 in order book" means that we received the Holt Hardwood Company letter of acceptance of the order, which said letter was pasted in our order book. The pencil memoranda to the right of the prices

Holt made us are certain memoranda of the prices that we received from some other manufacturer or his agent at or about that date. The prices made us by Holt and by some other manufacturer were as follows:

Select maple flooring—Holt's price \$82.75; the other party's price, \$90.00.

Clear—Holt's price was \$92.75 and the other party's price was \$100.00.

[fol. 814] Factory—Holt's price, \$37.75, and the other price was \$50.00.

All the memoranda appearing on said slip were made in the ordinary course of business on or about August 17th, 1922, and the order was placed with the Holt Hardwood Company at the prices they quoted. I cannot state at this time what manufacturer made the quotations appearing opposite the Holt Company's quotations. We took all the flooring in question.

(Said Defendants' Hawley Exhibit 3 received in evidence.)

Defendants' Hawley Exhibit 4 for identification is a memoranda of prices made by Mr. De Witt of the Holt Hardwood Company about February 1st, 1919. Those prices were to be maintained until July 1st, 1919. No quantity was stated. The Holt Hardwood Company was to ship us whatever we might need. On 13/16 by 2¼ inch Clear maple flooring the price was to be \$57.50 per thousand. On 13/16 by 2¼ inch No. 1 maple flooring, the price was to be \$53.50 per thousand; on 13/16 by 2¼ inch factory maple flooring, \$45.00 per thousand.

On 13/16 by 3¼ inch face Clear maple flooring, \$55.50 per thousand; 13/16 by 3¼ inch face No. 1 maple flooring, \$52.50; 13/16 by 3¼ inch factory maple flooring, \$47.50. ¾ inch by 2 inch face clear maple flooring, \$42.00 a thousand.

We ordered flooring at the prices above mentioned. I could not state at this time how much.

Defendants' Hawley Exhibit 5 for identification is an order given the Holt Hardwood Company, dated February 26th, 1919, which ap-[fol. 815] plies on previous order that was given to them about February 1st, for 20,000 feet of 13/16 by 2¼ inch face Clear maple flooring at \$57.50; eight to ten thousand feet 3¼ inch by 13/16 inch No. 1 Factory flooring, \$47.50. The quantities mentioned on Defendants' Hawley Exhibit 5 were ordered out and received at our Chicago Avenue yard.

Defendants' Hawley Exhibit 6 for identification was an order placed with the Holt Hardwood Company of Oconto on December 4, 1918, for one car of 13/16 by 2¼ inch face factory maple flooring at \$38.75 per thousand. The price was f. o. b. cars Chicago, as were all the other prices heretofore mentioned. All the entries made on Defendants' Hawley Exhibits 2, 3, 4, 5, and 6 were made by me in the ordinary course of business. We are still ordering out flooring on that Exhibit covering 475,000 feet. We buy all our flooring f. o. b. cars Chicago. We then know exactly what it costs us. If we

buy f. o. b. the mill, we do not always know what the freight will be. We prefer that the shipper take the risk of transportation.

(The exhibits for identification above mentioned were received in evidence, and were marked Defendants' Hawley exhibits and given the identification numbers.)

Cross-examination.

By Mr. Thompson:

We purchase at least 95 per cent of our maple flooring from the Holt Hardwood Company. We do not always get Holt's prices first. If their representative does not call on us we call up two or three and get prices. If Holt Hardwood Company's representative is here we get Holt's prices first and then call others up. If we get lower prices from other persons we tell Holt about it. Usually the price of the Holt Hardwood Company has been low. I mean that their price is usually the lowest of the three or four that I may get. We call Wisconsin Land & Lumber Co.; Flanner-Steeger Land & Lumber Company and a concern that is represented here by the Lumber Mills Corporation, who are commission men. We frequently get prices from commission men without knowing whom they represent. We usually ask commission men whether flooring offered was made by a member of the Association or whose flooring it is they are quoting on. We have also had I. Stephenson & Company's prices. When we have a large standing order placed with one manufacturer we do not pay much attention to other prices quoted to us. We have always preferred to do business with members of the Maple Flooring Manufacturers Association. I think their grades are more standard than the grades of outside people. I would say that I have never yet asked for prices that I did not find a variation all the way from 50 cents to \$7.50 a thousand feet between the highest and the lowest. Sometimes there would be some quotations that would be the same.

Redirect examination.

By Mr. Darby:

Recently it has been our custom to place large standing orders instead of buying a carload at a time. About the time when we want to place large standing orders is when we pay special attention to prices. I think I have seen the Articles of Association but do not know whether there has been one or a dozen associations that have succeeded one another called the Maple Flooring Manufacturers Association.

[fol. 817] DEPOSITION OF CHARLES J. HENIFF, TAKEN, PURSUANT TO STIPULATION, AT CHICAGO, ILLINOIS, ON OCTOBER 23D, 1923

CHARLES J. HENIFF, being duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

I am in the retail lumber business and have been for nearly thirteen years. I am associated with the Bay State Lumber Company, which handles all classes of building lumber and hardwood flooring. This company has been in business for thirteen years and is located on the South Side in Chicago. Our company handles maple, beech, birch and oak flooring. I keep in touch with market conditions through telephone quotations from the representatives of the different mills and some of them call on me direct. We do not send out inquiries addressed to the different manufacturers. We buy most of our flooring from the Northwestern Cooperage & Lumber Co. We always check up on the quotations they make us; that is, we compare their quotations with the quotations made us by other mills.

"Q. State whether or not there has always existed, so long as you know, a variation or difference in prices that were quoted you by the different manufacturers of maple, beech and birch flooring?"

A. We have always found a variation of prices.

Q. Do you consider from your knowledge of the business and your business experience that there exists competition here in Chicago among the different manufacturers of maple, beech and birch flooring?

A. Yes, there is.

Q. Do you consider that the manufacturers have been fair in dealing with the retail yard dealers or wholesale yard dealers?

[fol. 818] A. I believe they have.

Q. Do you consider that the price of maple, beech and birch flooring has been fair and reasonable?

A. I do."

I have never had occasion to ask for a reinspection. We have never had a complaint on flooring. Deliveries have been made promptly to us and every shipment has been checked and found to be O. K.

"Q. You say that there has been a variation in prices of the flooring, maple, beech and birch flooring? Would you say that that variation is as large as the variation in the prices of the other floorings and lumber that you buy?"

A. In my estimation, about the same proportion.

Q. I wish you would read from this list here of the Maple Flooring Manufacturers Association as now constituted, and read the names of the Manufacturers from whom you have received quotations either by telephone, or through their agents and representatives? (Showing witness list.)

A. Nichols & Cox, North Branch Flooring Company, Northwestern

Cooperage & Lumber, I. Stephenson, Strable Lumber & Salt, J. W. Wells and W. D. Young.

Q. About how many thousand feet of maple, beech and birch flooring would you handle during a year?

A. Close to half a million.

Q. About what is the total quantity, in feet, of all products that you handle? Could you roughly approximate that?

A. About a million feet."

[fol. 819] Cross-examination.

By Mr. Thompson:

I think that we purchase about 80 per cent of our flooring from the Northwestern Cooperage & Lumber Co. We always compare their prices with the prices of at least three other manufacturers whose names were given me just before the close of my direct examination. The opinion that I expressed as to the existence of competition in the sale of maple flooring is based on the fact of not receiving identical or uniform quotations. It is because of the variation in prices received.

Redirect examination:

By Mr. Darby:

"Q. Would you say that these variations had been substantial, or not?

A. Oh, yes.

Q. They have been substantial?

A. Yes. They would at times run as high as five dollars difference.

Q. Have you ever had occasion to inform the Northwestern Cooperage & Lumber Company, with whom you largely deal, that some one else had quoted a lower price?

A. We have done that in one instance, I believe.

Q. And state whether or not they met the competition?

A. They met competition, in taking the order."

[fol. 820] DEPOSITION OF ROBERT H. GILLESPIE, TAKEN, PURSUANT TO STIPULATION, ON OCTOBER 23d, 1923, AT CHICAGO, ILLINOIS

ROBERT H. GILLESPIE, being duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

I am in the retail lumber business here in Chicago. I handle about 5,000,000 feet a year. I handle about 300,000 feet of maple, beech and birch flooring annually. I have been in the lumber

business 35 years and have operated a yard in Chicago for 25 years. I keep in touch with market conditions and the prices of maple, birch and beech flooring by getting quotations through the mail or over the telephone and from agents that call on me. During the time that I have been operating a yard here, I have been familiar with market conditions and the price of maple, beech and birch flooring. Most of our quotations come through the mail. Defendants' Gillespie Exhibit 1 for identification is an inquiry that I sent out dated August 8, 1922, and the quotations that were received in response thereto. On one-half car 13/16—2¼ inch Clear maple flooring we received the following quotations:

Northwestern Cooperage & Lumber Co.	\$96.75
Ward Brothers	96.75
Holt Hardwood Co.	94.75
I. Stephenson Company	99.75

On one-half car 13/16 by 2¼ inch No. 1 maple flooring we received the following quotations:

Northwestern Cooperage & Lumber Co.	\$86.85
Ward Brothers	86.75
Holt Hardwood Co.	84.75
I. Stephenson Company	89.75

All the foregoing quotations were f. o. b. cars Chicago.

(Said Exhibit was received in evidence.)

[fol. 821] Defendants' Gillespie Exhibit 2 for identification is a letter addressed to the Strable Lumber & Salt Company, asking for a quotation on 13/16—2¼ inch Clear and 13/16—2¼ inch No. 1 Maple Flooring, dated December 24, 1920, and the answer of the Strable Lumber & Salt Company. Strable Lumber & Salt Company quoted for the flooring above mentioned \$128.00 per thousand f. o. b. cars Chicago. The East Jordon Lumber Company wrote us on December 27th, 1920, that their agent, D. K. MacPherson, would call. Mr. MacPherson called and quoted us a price of \$105.00 per thousand f. o. b. cars Chicago on 13/16—2¼ inch Clear maple flooring. The Northwestern Cooperage & Lumber Co. made a quotation of \$129.75 on the same grade of flooring, and later reduced their price to \$120.00 per thousand, f. o. b. cars Chicago. We also received quotations from the Strable Lumber & Salt Co. On 13/16—2¼ inch No. 1 Maple Flooring, they quoted \$113.00 per thousand, f. o. b. cars Chicago. No other quotations were made on this flooring. The letters of the East Jordon Company, Northwestern Cooperage Company and Strable Lumber & Salt Co are attached to our letter of December 24th, 1920, and are a part of Defendants' Gillespie Exhibit 2 for identification.

(Said Exhibit was received in evidence.)

Defendants' Gillespie Exhibit 3 for identification is a letter I sent out dated May 22d, 1922, asking for quotations on certain items of

maple flooring. The Holt Hardwood Company quoted us on one-third of a car of 13/16 by 2¼ inch clear maple flooring, \$94.75 f. o. b. cars Chicago, and Ward Brothers quoted us on one-half car 13/16 by 2¼ inch clear maple flooring, \$96.25 f. o. b. cars Chicago. [fol. 822] The quotation of Holt Hardwood Company is dated May 22d, 1922, and the quotation of Ward Brothers is dated July 6, 1922. At the same time the Holt Hardwood Company quoted us \$79.75 per thousand for one-third of a car 13/16 by 2¼ inch face No. 1 maple flooring. At the time Ward Brothers made their previous quotation they quoted us one-half car 13/16 by 2¼ inch face No. 1 maple flooring f. o. b. cars Chicago, \$86.25 per thousand. The prices above mentioned were subject to the usual two per cent cash discount in ten days from date of invoice.

(Said Exhibit was received in evidence.)

Defendants' Gillespie Exhibit 4 for identification is a letter I sent out dated June 12th, 1923, asking for quotations on 5,000 feet of 13/16 by 2¼ inch clear, 10,000 feet of 13/16 by 2¼ inch face No. 1; 5,000 feet of 13/16 by 2¼ inch Factory maple flooring, and the quotations received in response thereto. The quotations that we received on the Clear maple flooring were as follows:

Holt Hardwood Co.	\$104.75
Northwestern Cooperage & Lumber Co.	107.00
Ward Brothers	106.25

All the foregoing quotations were f. o. b. cars Chicago. We received the following quotations on the No. 1 maple flooring:

Holt Hardwood Co.	\$94.75
Northwestern Cooperage & Lumber Co.	99.00
Ward Brothers	96.25

The foregoing quotations were f. o. b. cars Chicago.

The quotations we received on Factory maple flooring were as follows:

Holt Hardwood Co.	\$54.75
Northwestern Lumber & Cooperage Co.	56.00
Ward Brothers	56.25

[fol. 823] All quotations were f. o. b. cars Chicago.

(Said Exhibit received in evidence.)

All the foregoing exhibits include all the answers that were received in response to the respective inquiries. We buy all our lumber f. o. b. cars Chicago. We do not want to be checking up expense bills that we receive from the railroads or to be bothered with making claims for overcharges, overweights, etc.

Ever since I can remember the terms generally allowed on all lumber and lumber products is two per cent cash discount ten days from date of invoice. That is the universal custom on any lumber or lumber products. Besides the manufacturers above mentioned

I have from time to time purchased flooring from other manufacturers of maple flooring and have received quotations from all the manufacturers mentioned in the list you hand me, which purports to be a statement of the membership of the defendant Maple Flooring Manufacturers Association. In my opinion there has at all times existed competition in the Chicago market among manufacturers of maple, beech and birch flooring from whom I have received quotations or prices or from whom I have bought flooring.

"Q. State whether or not there has always been a substantial variation or difference between the prices that have been quoted you, or which you have been able to buy flooring at, from these different manufacturers?

A. Well, there has always been a difference. Of course, once in a while, like in any other line, you might receive the same quotations; but there has always been a difference between figures, when we were sending out a list for quotations.

[fol. 824] Q. You mean that some would quote an identical price, but that there would be others that would quote different prices, and that there was always a substantial difference between the high and the low?

A. Well, of course, it all depends upon what you mean by substantial difference. There always has been a difference.

Q. State whether or not the difference was large enough to induce you to give the preference to one rather than the other?

A. Oh, yes.

Q. State whether or not the variation in prices quoted you by different manufacturers of maple, beech and birch flooring was as large as the variation in the prices of other lumber that you bought?

A. I think it was practically the same, and has been practically the same."

Cross-examination.

By Mr. Thompson:

The number of manufacturers to whom I would address an inquiry at any particular time varied. Sometimes I pick out four or five, sometimes I pick out more, or less. There might be some manufacturers, you know, that might not have Chicago for a good market, or freight rates might be against them, and there would be no use of sending to them. The average number of manufacturers from whom I receive quotations at the same time is about six or seven or eight, sometimes more and sometimes less.

Redirect examination.

By Mr. Darby:

I brought with me such inquiries and the answers thereto as I have been able to find in my files. I have never had occasion to ask for a reinspection of any flooring that I purchased from any of the manufacturers. The grades have always been satisfactory.

[fol. 825] DEPOSITION OF GEORGE W. KEEHN,

Taken at Chicago, Illinois, pursuant to the general stipulation for the taking of depositions of the various witnesses and to the special stipulation which was entered into before the taking of the deposition of George W. Keehn, which reads as follows:

"It is stipulated by the parties that the Deposition of George W. Keehn may be taken now, with respect to some preliminary matters, notwithstanding the fact that he intends to be and will be present at the hearing of this cause, and will be available to the Government as a witness in this cause. The defendants promise that Mr. Keehn will be present at the hearing; and the plaintiff agrees that Mr. Keehn's deposition may be taken now and used at the hearing, even though he then be present as a witness."

Mr. KEEHN, being duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

I live at Kenilworth, Illinois, and am the secretary of the defendant Association, and have been since it was organized on January 1st, 1922. In a general way, my duties are as follows: I receive from the manufacturers who are members of the Association, reports regarding fundamental conditions in the industry. I assemble and consolidate those statistics and then report them in bulletins to the members of the Association, to the Department of Commerce, Washington, D. C., the Bureau of Census, and to various trade papers, and to others who may request them, such as, for instance, the Federal Reserve Bank. There have been other maple flooring manufacturers associations of which I was secretary. There was such an association in existence in 1914. That association was organized [fol. 826] on January 1st, 1913, with a limitation as to existence of three years. The name of that Association was the Maple Flooring Manufacturers Association; and I was its secretary. The membership of that Association was as follows:

- No. 1, T. Wilce Company.
- No. 2, W. D. Young & Company.
- No. 3, Mitchell Bros. Company.
- No. 4, Wisconsin Land & Lumber Company.
- No. 5, Cobbs & Mitchell, Inc.
- No. 6, Thomas Foreman Company.
- No. 7, I. Stephenson Company, Trustees.
- No. 8, Rittenhouse & Embree Company.
- No. 9, S. L. Eastman Flooring Company.
- No. 12, Bliss & Van Auken Lumber Company.
- No. 14, Cummer-Diggins Co.

- No. 15, Dwight Lumber Company.
- No. 17, John Schroeder Lumber Company.
- No. 22, Osgood & Blodgett Manufacturing Company.
- No. 24, Kerry & Hanson Flooring Co.
- No. 26, East Jordan Lumber Company.
- No. 29, Welsh & Kerry Company.
- No. 30, Nichols & Cox Lumber Company.
- No. 32, A. L. Dennis Salt & Lumber Company.
- No. 33, Strable Manufacturing Company.
- No. 34, Foster-Latimer Company.
- No. 36, W. H. White Company.
- No. 37, West Michigan Flooring Company.
- No. 38, R. Connor Company.

[fol. 827] No. 40, The Lobdell & Churchill Manufacturing Company.

- No. 42, J. W. Wells Lumber Company.
- No. 43, Hanson & Ward Veneer Company.
- No. 44, Northwestern Cooperage & Lumber Company.
- No. 46, G. H. Tennant Company.
- No. 47, William Horner.

The firms and corporations above named were all the members of the Association that was in existence from January 1st, 1913, to January 1st, 1916. The following changes in the membership of said Association took place: Rittenhouse & Embree ceased to manufacture maple, beech and birch flooring and their membership terminated on August 1st, 1915. The Bliss & Van Auken Lumber Company joined the Association on March 1st, 1913. A. L. Dennis Salt & Lumber Company, who joined the Association on January 1st, 1913, terminated their membership on December 31st, 1915. The Strable Manufacturing Company changed the style of their firm subsequently to Strable Lumber & Salt Company. The W. H. White Company, who joined on January 1st, 1913, continued their membership under that name until July, 1914, when they went into the hands of a Receiver, and the Michigan Trust Company of Grand Rapids, Michigan, as Receiver continued the membership of W. H. White & Company until September 11th, 1915, when their flooring plant was destroyed by fire. The Lobdell & Churchill Manufacturing Company subsequently changed their name to the Lobdell & Emery Manufacturing Company. William Horner joined the Association on July 1st, 1915, and terminated his membership on December 31st, 1915. The T. Wilce Company is not a member of the present Maple Flooring Manufacturers [fol. 828] Association. The Wisconsin Land & Lumber Company never agreed to join the present defendant Association and never signed the Articles of Association which became effective on January 1st, 1922, and do not consider themselves members of the defendant Association. However, I should state that they contributed statistical data and that data has been exchanged with them during 1922, but they ceased all relations with the defendant Association about

the middle of March, 1923. The Thomas Forman Company are not members of the present defendant Association. Rittenhouse & Embree are not members. Neither is the S. L. Eastman Flooring Company nor Bliss & Van Auken Lumber Company, nor the Dwight Lumber Company, nor the John Schroeder Lumber Company, nor the Welsh & Kerry Company, nor the A. L. Dennis Salt & Lumber Company, nor the W. H. White Company; nor the Michigan Trust Company as Receiver for W. H. White Company, nor R. Connor Company, nor the Lobdell & Churchill Manufacturing Company, nor the Lobdell-Emery Manufacturing Company, nor the Hanson & Ward Veneer Company, nor G. H. Tennant & Company. William Horner is a member of the present defendant Association under the name of Grand Rapids Trust Company as Receiver for William Horner. None of the persons, firms or corporations whom I have stated are not members of the present defendant Maple Flooring Manufacturers Association have ever been members of the said association. As to the present membership of the Wisconsin Land & Lumber Company in the present defendant Association, that is a technical question upon which I cannot pass.

The numbers given to the members of the Association in existence from January 1st, 1913, to January 1st, 1916, were for convenience [fol. 829] in keeping our statistical record and in sending out statistical reports. For instance, it was very much easier to use the figure 4 than to write, Wisconsin Land & Lumber Company, or to use the figure 44 instead of Northwestern Cooperage & Lumber Company. There was never any secrecy about the members of the Association and we furnished from time to time when requested, to the Government or to the Department of Commerce or bodies like that, identification numbers and names of members. It was simply as a matter of convenience, because in some of our statistical works it would be very difficult to write out the names on the sheets of paper that we use in the compilation of statistics. Upon the expiration of the Articles of Association on January 1st, 1916, a new Association was formed for a period of three years, or until January 1st, 1919. I have a list of the members of that Association. The membership of that Association was as follows:

No. 1, T. Wilce Company, Membership commenced January 1, 1916.

No. 2, W. D. Young & Co., Membership commenced January 1, 1916.

No. 3, Mitchell Bros. Co., Membership commenced January 1, 1916.

No. 4, Wisconsin Land & Lumber Co., Membership commenced January 1, 1916.

No. 5, Cobbs & Mitchell, Inc., Membership commenced January 1, 1916.

No. 6, Thomas Forman Co., Membership commenced January 1, 1916.

No. 7, I. Stephenson Co. Trustees, Membership commenced January 1, 1916, but their membership was terminated on April 1st, 1917.

No. 9, E. L. Eastman Flooring Co., Membership commenced January 1st, 1916, and was terminated March 1st, 1917, because of fire that destroyed their plant.

No. 12, Bliss & Van Auken Lumber Co., Membership began January 1st, 1916, and terminated November 1st, 1917, on account of fire that destroyed their plant.

No. 14, Cummer-Diggins Co., Membership began January 1st, 1916.

[fol. 830] No. 15, Dwight Lumber Co., Membership began January 1st, 1916, and terminated December 31st, 1918.

No. 17, John Schroeder Lumber Co., Membership began January 1, 1916.

No. 22, Osgood & Blodgett Manufacturing Co., Membership began January 1, 1916.

No. 24, Kerry & Hanson Flooring Co., Membership began January 1, 1916.

No. 26, East Jordan Lumber Co., Membership began January 1, 1916.

No. 29, Welsh & Kerry Co., Membership began January 1, 1916.

No. 30, Nichols & Cox Lumber Co., Membership began January 1, 1916.

No. 33, Strable Lumber & Salt Co., Membership began January 1, 1916.

No. 34, Foster-Latimer Co., Membership began January 1, 1916.

No. 37, West Michigan Flooring Co., Membership began January 1, 1916.

No. 38, R. Connor Co., Membership began January 1, 1916.

No. 40, The Lobdell-Emery Manufacturing Co., Membership began January 1, 1916; membership terminated on September 1st, 1916, because they ceased to manufacture flooring.

No. 42, J. W. Wells Lumber Co., joined January 1, 1916.

No. 43, Hanson-Ward Veneer Co., joined January 1, 1916.

No. 44, Northwestern Cooperage & Lumber Co., joined January 1, 1916.

No. 46, G. H. Tennant Company, joined January 1, 1916.

No. 48, North Branch Flooring Co., joined September 1, 1916.

No. 49, Bigelow-Cooper Company, membership began November 1, 1917.

Of the persons, firms and corporations above mentioned, the following persons, firms and corporations are not now and were never members of the present defendant Maple Flooring Manufacturers Association:

T. Wilce Company,
 Thomas Forman Company,
 S. L. Eastman Flooring Company,
 [fol. 831] Bliss & Van Auken Lumber Company,
 Dwight Lumber Company,
 John Schroeder Lumber Company,

Welsh & Kerry Company,
 R. Connor Company,
 Lobdell-Emery Manufacturing Company,
 Hanson-Ward Veneer Company,
 G. H. Tennant Company,

and the same statement should be made as heretofore with respect to the Wisconsin Land & Lumber Company. The explanation that I gave before with respect to the use of numbers also applied to the use of numbers to identify the members of the Association that was in existence from January 1st, 1916, to January 1st, 1919.

Upon the termination of the Articles of Association on January 1st, 1919, a new Association was formed to exist from January 1st, 1919, to July 1st, 1919. I have prepared a list of the membership of the Association last named. Said membership was as follows:

- No. 1, T. Wilce Company, Membership began January 1, 1919.
- No. 2, W. D. Young & Co., ditto.
- No. 3, Mitchell Brothers Co., ditto.
- No. 4, Wisconsin Land & Lumber Co., ditto.
- No. 5, Cobbs & Mitchell, Inc., ditto.
- No. 6, Thomas Forman Co., ditto.
- No. 7, I. Stephenson & Company, Trustees, Membership began February 1, 1919.
- No. 14, Cummer-Diggins Co., Membership began January 1, 1919.
- [fol. 832] No. 17, John Schroeder Lumber Co., Membership began January 1, 1919.
- No. 22, Osgood & Blodgett Manufacturing Co., Membership began January 1, 1919.
- No. 23, Holt Hardwood Co., Membership began March 1, 1919.
- No. 24, Kerry & Hanson Flooring Co., Membership began January 1, 1919.
- No. 26, East Jordan Lumber Co., Membership began January 1, 1919.
- No. 29, Welsh & Kerry Co., Membership began January 1, 1919.
- No. 30, Nichols & Cox Lumber Co., Membership began January 1, 1919.
- No. 33, Strable Lumber & Salt Co., Membership began January 1, 1919.
- No. 34, Foster-Latimer Lumber Co., Membership began January 1, 1919.
- No. 37, West Michigan Flooring Co., Membership began January 1, 1919.
- No. 38, R. Connor Company, Membership began January 1, 1919.
- No. 39, Mason-Donaldson Lumber Co., Membership began March 1, 1919.
- No. 42, J. W. Wells Lumber Co., Membership began January 1, 1919.
- No. 43, Hanson-Ward Veneer Co., Membership began January 1, 1919, and terminated June 30, 1919, because they ceased to manufacture flooring.
- No. 44, Northwestern Cooperage & Lumber Co., Membership began January 1, 1919.

No. 45, Flanner-Steger Land & Lumber Co., Membership began March 1, 1919.

No. 46, G. H. Tennant & Co., Membership began January 1, 1919.

No. 47, William Horner, Membership began March 1, 1919.

No. 48, North Branch Flooring Co., Membership began January 1, 1919.

No. 49, Bigelow-Cooper Co., Membership began January 1, 1919.

No. 50, Kneeland-McLurg Lumber Co., Membership began March 1, 1919.

The following persons, firms and corporations are not now and never were members of the present defendant Maple Flooring Manufacturers Association:

T. Wilce Company,
 Thomas Forman Company,
 [fol. 833] John Schroeder Lumber Company,
 Welsh & Kerry Company,
 R. Connor Company,
 Mason-Donaldson Lumber Company,
 Handson-Ward Veneer Company,
 G. H. Tennant Company.

William Horner went into the hands of a Receiver at the close of 1921. However, the Grand Rapids Trust Company, as Receivers for William Horner, joined and is now a member of the present defendant Maple Flooring Manufacturers Association. The same explanation that I gave before with reference to the Wisconsin Land & Lumber Company applies here, as does also the explanation with respect to the use of identifying numbers.

Upon the expiration of the articles of association on July 1st, 1919, a new association was formed to exist from July 1st, 1919, to July 1st, 1922, but that association was terminated as of December 31st, 1921. The membership of that Association was as follows:

No. 1, T. Wilce Co., Membership began July 1, 1919, and they contributed statistics during the first quarter of 1922 to the present defendant Maple Flooring Manufacturers Association, but did not become members of the present defendant Association. The same applied to No. 17, John Schroeder Lumber Company.

No. 4, Wisconsin Land & Lumber Co., with the same statement as given heretofore.

No. 5, Cobbs & Mitchell, Membership began July 1st, 1919.

No. 2, W. D. Young & Co., ditto.

No. 3, Mitchell Bros. Co. ditto.

No. 6, Thomas Forman Co., Membership began July 1st, 1919, terminated December 31, 1919.

[fol. 834] No. 7, I. Stephenson Co., Trustees, Membership began July 1, 1919.

No. 14, Cummer-Diggins Co., Membership began July 1, 1919.

No. 23, Holt Hardwood Co., Membership began July 1, 1919, terminated March 1, 1920, and resumed again January 1st, 1921.

No. 24, Kerry & Hanson Flooring Co., Membership began July 1, 1919.

No. 26, East Jordan Lumber Co., Membership began July 1, 1919.

No. 29, Welsh & Kerry Co., Membership began July 1, 1919, and terminated March 1, 1921, because they ceased to manufacture flooring.

No. 30, Nichols & Cox Lumber Co., Membership began July 1, 1919.

No. 33, Strable Lumber & Salt Co., ditto.

No. 34, Foster-Latimer Lumber Co., ditto.

No. 37, West Michigan Flooring Co., ditto.

No. 38, R. Connor Co., Membership commenced July 1, 1919, and terminated February 1, 1920.

No. 39, Mason-Donaldson Lumber Co., Membership began July 1, 1919, terminated March 1, 1920, because ceased to manufacture flooring.

No. 42, J. W. Wells Lumber Co., Membership began July 1, 1919.

No. 44, Northwestern Cooperage & Lumber Co., ditto.

No. 45, Flanner-Steger Land & Lumber Co., ditto.

No. 46, G. H. Tennant Co., Membership began July 1, 1919, and terminated June 1, 1921.

No. 47, William Horner, Membership began July 1, 1919.

No. 48, North Branch Flooring Co., ditto.

No. 49, Bigelow-Cooper Co., ditto.

No. 50, Kneeland-McLurg Lumber Co., ditto.

No. 51, Oval Wood Dish Corporation, Membership began August 1, 1921.

The following persons, firms and corporations are not now members of the present defendant Maple Flooring Manufacturers Association:

[fol. 835] T. Wilce Company,

Thomas Forman Company,

John Schroeder Lumber Company,

Welsh & Kerry Company,

R. Connor Company,

Mason-Donaldson Lumber Company,

G. H. Tennant Company,

and the same explanation given heretofore with respect to William Horner and the Wisconsin Land & Lumber Company.

The Association that was organized on July 1, 1919, and which was to extend until July 1, 1922, was terminated as of December 31st, 1921. In stating that the T. Wilce Company membership terminated on April 1st, 1922, I meant that they gave their statistics to the succeeding Association, which was organized during the early part of July, 1922, but T. Wilce Company never became a member of the present defendant Association. The same explanation is applicable to the John Schroeder Lumber Company, and neither the T. Wilce Company nor the John Schroeder Lumber Company have signed the articles of the present defendant Maple Flooring Manufacturers Association.

After December 31st, 1921, a new Association was organized with articles dated January 1st, 1922, but the complete organization was not consummated until in March 1922. These articles were dated back to January 1, 1922, and were to continue in force and effect until January 1, 1925. The names, numbers and addresses of the present defendant Maple Flooring Manufacturers Association are as follows:

- [fol. 836] No. 2, W. D. Young & Co., Bay City, Michigan.
 No. 3, Mitchell Brothers Co., Cadillac, Michigan.
 No. 4, Wisconsin Land & Lumber Co., Hermansville, Michigan, with the explanation heretofore made concerning said company.
 No. 5, Coggs & Mitchell, Inc., Cadillac, Michigan.
 No. 7, I. Stephenson Co. Trustees, Wells, Michigan.
 No. 14, Cummer-Diggins Co., Cadillac, Michigan.
 No. 22, Osgood & Blodgett Manufacturing Co., St. Paul Minnesota.
 No. 23, Holt Hardwood Co., Oconto, Wisconsin.
 No. 24, Kerry & Hanson Flooring Co., Grayling, Michigan.
 No. 26, East Jordan Lumber Co., East Jordan, Michigan.
 No. 30, Nichols & Cox Lumber Co., Grand Rapids, Michigan.
 No. 33, Strable Lumber & Salt Co., Saginaw, Michigan.
 No. 34, Foster-Latimer Lumber Co., Mellen, Wisconsin.
 No. 37, West Michigan Flooring Co., Manistee, Michigan.
 No. 42, J. W. Wells Lumber Co., Menominee, Michigan.
 No. 44, Northwestern Cooperage & Lumber Co., Gladstone, Michigan.
 No. 45, Flanner-Steger Land & Lumber Co., Blackwell, Wisconsin.
 No. 47, Grand Rapids Trust Company, Receiver for William Horner, Reed City.
 No. 48, North Branch Flooring Co., Chicago, Illinois.
 No. 49, Kneeland-Bigelow Co., Bay City, Michigan.
 No. 50, Kneeland-McLurg Lumber Co., Phillips, Wisconsin.
 No. 51, Oval Wood Dish Corporation, Tupper Lake, New York.

The Bigelow-Cooper Company's name was changed to the Kneeland-Bigelow Company about January 1, 1923. All the persons, firms and corporations above mentioned have been members of the present defendant Association from the date of its organization, and [fol. 837] are members at the present time, with the reservation, of course, heretofore made with respect to the Wisconsin Land & Lumber Company. The lists that I have prepared of the membership of the various Associations are true and correct.

(Said lists were marked Defendants' Keehn Exhibits 1, 2, 3, 4 and 5.)

In response to questions put by Mr. Thompson of counsel for the plaintiff, Mr. Keehn testified that the Articles of Association were not signed by the several members at the same time; for instance the Articles dated January 1, 1913 may not have been signed by all the members for a month or so after; that the identifying numbers of the different members are not in sequence and that the missing

numbers represent members of previous Associations who had dropped out or who had not become members of succeeding Associations; that after a number had been assigned to a member the said member was given the same number in succeeding Associations.

(The documents marked Defendants' Keehn Exhibits 1, 2, 3, 4 and 5 respectively received in evidence.)

Thereupon direct examination was resumed by Mr. Darby.

The same number was given to a manufacturer who was a member of succeeding Associations simply as a matter of convenience. After a number had been given a manufacturer it was easier to remember the number and obviate confusion if the same number was assigned to him in succeeding Associations.

None of the Associations about which I have testified ever engaged in the manufacture or sale of maple, beech or birch flooring. None of them ever manufactured or sold maple, beech or birch [fol. 838] flooring. The manufacturers belonging to said Associations were engaged in the manufacture and sale of maple, beech and birch flooring. I was not engaged in the manufacture of maple, beech and birch flooring during any of the times above mentioned.

There were Associations previous to 1914. The date of my first connection with any Maple Flooring Manufacturers Association was 1905. I was Secretary of that Association and there were Associations between 1905 and 1914 of which I was the Secretary. Between 1905 and 1914 I had been to the plants of some of the members of the various Associations and had seen flooring manufactured and had seen the flooring in the warehouses and had a general knowledge of maple, beech and birch flooring product. Between 1905 and 1914 I was familiar with the grades of maple, beech and birch flooring. In about 1912 or 1913 there was a movement initiated by the manufacturers of maple, beech and birch flooring with respect to the standardization of the different grades of flooring. Before and at that time the flooring was manufactured in three grades, namely, the Clear grade, which is the best quality, the No. 1 grade, which is the second quality, and the Factory grade. Along in 1910, 1911 or 1912 there was considerable agitation with respect to standardizing the grades. This agitation became quite strong in 1913. In 1914 an effort was made to standardize the grades in order that manufacturers would know what they were expected to furnish and that architects and the consumers of flooring generally would be protected and get the grades of flooring that they wished to use. Some manufacturers were strongly in favor of standardization, some [fol. 839] were luke warm and others were opposed to standardization. All of them felt the importance of standardization in a general way, but like every movement of that kind it grew and developed somewhat slowly.

The conditions that lead to the agitation for standardization of grades were the many complaints that were received by the manufacturers regarding the flooring that they had shipped. There was an absence of a precise definition and authoritative interpretation

of grading rules. Each one put his own interpretation upon what constituted Clear or No. 1 or Factory. This was also true of architects, dealers and consumers. They knew in a general way that there was a Clear grade and a No. 1 and a Factory grade, but there was confusion and disagreement as to what was meant by Clear, No. 1 and Factory as applied to grades.

Maple, beech and birch flooring were shipped to all parts of the United States and the grading rules were differently interpreted in different parts of the United States. As a result of the agitation for standardization, grades were more precisely and clearly defined so that the manufacturer and architect and the consumer would know what was intended by Clear grade, No. 1 grade and the Factory grade. The Association that brought about the standardization was the one that was organized on January 1, 1913. That Association took up the movement for standardization in the spring of 1914. They employed an expert flooring man, Mr. M. H. Robertson of East Jordan, Michigan. Mr. Robertson had had a wide experience [fol. 840] in every branch of the lumber business. He had been a manufacturer of maple, beech and birch flooring. In the earlier days he was an inspector of rough maple and other lumber and had a thorough knowledge of the characteristics and grades of the raw material. He was also thoroughly familiar with logging operations and saw mill processes because at one time he had been an employee of the East Jordan Lumber Company, who had a saw mill and extensive timber holdings. As above stated, Mr. Robertson had been engaged in the manufacture of maple flooring with a plant at East Jordan, Michigan. After that he was engaged in the superintendence of the manufacturing operations and in the sale of maple flooring produced by the East Jordan Lumber Company after that Company took over Mr. Robertson's flooring plant. Mr. Robertson was a man of very high integrity and impartiality and had the confidence of the trade and of the other members of the Association. In the sale of flooring, Mr. Robertson had come in contact with architects, buyers and dealers in travelling about the country. The Association was convinced that if anyone was capable of standardizing the grades, Mr. Robertson was the man. They therefore employed him to do the work and requested him to make preliminary trips among the mills in 1914. Mr. Robertson has also visited the flooring mills at different times since. The three different grades of maple, beech and birch flooring have been defined by means of grading rules by the present defendant Association.

The Defendants' Keehn Exhibit 6 for identification is a copy of the grading rules for maple, beech and birch flooring which were adopted on July 29, 1920 by the Maple Flooring Manufacturers Association then in existence, and copyright.

[fol. 841] When the present Association came into existence on January 1, 1922, it continued to use the same grading rules. The Association which originally adopted said rules on January 28, 1920 had about 40,000 copies of the rules printed and distributed all over the country to architects, contractors, retail lumber dealers, wholesale lumber dealers and others, so that everyone interested in the

use of maple, beech or birch flooring could be fully informed as to said grading rules. Since January 1, 1922, the present defendant Association has merely continued to use such printed copies as had not been distributed.

It has been the custom for a great many years for various lumber Associations to adopt standard grades for their products. As a matter of interest, I have been collecting some of the grading rules of these other Associations. I have also been looking through the publications of the United States Chamber of Commerce of the War Industries Board regarding grading rules that have been adopted by the various Associations. In looking over some of these matters, the first reference that I can find with respect to grades of lumber and inspection service, etc. is in the charter that was granted to the Lumbermen's Exchange of Chicago by the State of Illinois on March 31, 1869, which reads as follows:

"Said corporation shall have power to appoint inspectors, as many as they shall see fit, to examine, measure and inspect lumber, timber, shingles, wood and every other article of traffic commonly dealt in by the members of said corporation or any of them or by persons engaged in what is commonly understood to be the lumber business, [fol. 842] and to prescribe the rules and fix the grades by which such inspectors shall be governed in the discharge of their duties, and a certificate of such inspector as to the quality, quantity or character of such article thus inspected, and their mark thereon, shall be evidence between buyer and seller of the grade, quantity, quality or character of the same, and shall be binding upon the members of said corporation or others interested who shall obtain, require or assent to the employment of such inspector.

"Nothing herein contained, however, shall compel the employment by any one, of any such inspector."

I might add that in those days very large quantities of lumber were shipped to Chicago by cargo. I worked on the cargo market from about 1883 to 1905 and in those days lumber was shipped right from the saw without grading. The full product of the log came upon the market and was offered for sale without a tally from the shipper and had to be inspected and tallied and sold in the different yards engaged in business in those days. Then later on, when the source of production was farther away from the market, different Associations were formed and they adopted grading rules for the different species of lumber.

In former days there were no official grading rules in any of the markets and if a dealer wanted to buy a lot of lumber, it was necessary for him to go to the saw mill, look the stock over, purchase it and then have it shipped. Lumber, as well as flooring, is very bulky [fol. 843] and it would not be practical to carry on the business of selling lumber or flooring and shipping samples all over the country. For example, if a lumber dealer in California or in New England wanted to buy a carload of flooring and there were no standard grades established, it would be necessary for him to make a trip to

the flooring mill to find out what he was going to get, for a manufacturer might call flooring Clear, No. 1 or Factory. On the other hand, if he wanted to have a sample shipped, that would be very cumbersome. A manufacturer might be obliged to ship 100 pieces of flooring as samples of Clear grade, and in that case they would not be typical of all the flooring contained in the grade. Consequently, in order to carry on the business it became necessary for all the different Associations to establish standard grades so that the buyer would know what he was to furnish and the seller would know what he was going to get.

In the earlier days of the maple flooring industry and generally in the lumber business, many honest differences of opinion arose between the buyer and the seller because the grades were not clearly defined. It is my experience that the more clearly the grade of flooring or lumber is defined, the more satisfactory it is to the honest buyer and the honest seller. A clear definition of the different grades eliminates ambiguities and sources of confusion and disagreement. For these reasons grading rules have been adopted by the various Associations. Here are the 1922 standard specifications of grades of Southern Yellow Pine Lumber issued by the Southern Pine Association.

(Said booklet marked as Defendants' Keehn Exhibit 7 for identification.)

[fol. 844] Here are the Standard Specifications for grades of Southern Yellow Pine Lumber issued by the Georgia-Florida Saw Mill Associations, Jacksonville, Florida, and dated 1921.

(Said booklet marked Defendants' Keehn Exhibit 8 for identification.)

Here are the rules for the grading of Northern Pine Lumber adopted by the Northern Pine Manufacturers Association, Minneapolis, Minnesota, dated November 1, 1921.

(Said booklet marked Defendants' Keehn Exhibit 9 for identification.)

Here are the rules for the inspection of Hemlock Lumber, adopted by the Northern Hemlock Hardwood Manufacturers Association, Oshkosh, Wisconsin, February 1, 1918.

(Said booklet marked Defendant's Keehn Exhibit 10 for identification.)

There were also grading rules that were adopted by the West Coast Lumbermen's Association for Douglas Fir, Western Hemlock, Sitka Spruce, Western Red Cedar, Port Orford Cedar Lumber, but I have not a copy of such rules.

The National Hardwood Lumber Association has adopted rules for the Measurement and Inspection of Hardwood Lumber, Cypress, Figured Veneers, Thin Lumber and Plywood. These rules were issued in September, 1923.

(Said rules marked Defendant Keehn Exhibit 11 for identification.)

In said rules mention was made of the rules adopted by the Maple Flooring Manufacturers Association for grading maple, beech and birch flooring. On page 53 it is said:

"The National Hardwood Lumber Association has adopted the rules of the Maple Flooring Manufacturers' Association, 30 N. La Salle Street, Chicago, Ill."

[fol. 845] It is therefore possible for non-member manufacturers to obtain from the National Hardwood Lumber Association copies of the Maple Flooring Manufacturer- Association grading rules. Many of the non-members of the Maple Flooring Manufacturers Association belong to the National Hardwood Lumber Association.

Here are the grading rules of the Oak Flooring Manufacturers Association defining the grades of oak flooring.

(Said booklet marked Defendants' Keehn Exhibit 12 for identification.)

Here are the grading rules of the California Red Wood Association and Standard Specifications for Grades adopted June 1, 1923.

(Said booklet marked Defendants' Keehn Exhibit 13 for identification.)

There are other Associations that have grading rules, like the cypress people, I think, and I think that those other grading rules are incorporated in the National Hardwood Lumber Association rules.

These grading rules are offered merely to illustrate the universality of the practice of having grading rules for different lumber products in order to facilitate the business operations.

In looking through the War Industries Board Price Bulletin No. 43, published by the Government Printing Office in Washington in 1919, I find on page 8 the following references regarding grading and inspection rules:

"The dimensions of sawed material other than timbers are now standardized in all parts of the country, in conformity with trade custom and demand. This has been brought about largely through the various associations representing lumber manufacturers, each association composed of operators who manufacture some specific species or groups of species or who represent some section in which all the groups of lumbermen have business interests more or less in common. Grading and inspection rules are prepared by these associations, and their enforcement is secured by means of a paid corps of inspectors, who visit the mills, and who by inspection and instruction bring about a uniformity of grading and classification of products. This function is an extremely important one, both to the manufacturer and the consuming public, since a multitude of sizes and complexity of grades would lead to confusion in the merchandising of the product and to great inconvenience to the consumers."

I also produce a booklet entitled "Charter, Rules and By-Laws, the Lumbermen's Association of Chicago," dated 1899.

(Said booklet was marked Defendants' Keehn Exhibit 14 for identification.)

(The said Exhibits 6 to 14 inclusive were received in evidence.)

Sometime ago we received from the office of the Secretary of Commerce its Tenth Annual Report, dated 1922, with a little notation on top of it, in red typewritten form, "Your special attention is invited to pages 4, 8, 11, 12, 13, 15 and 29." That was addressed to George W. [fol. 847] Keehn, Secretary, Maple Flooring Manufacturers Association, 1045 Stock Exchange Building, Chicago, Illinois.

On page 13 under the caption, "Voluntary establishment of grades and qualities," appears the following:

"Agitation has been current for many years for the extension of the Federal laws to the establishment of grades and qualities of different commodities. The lack of such established grades and standards of quality add very largely to the cost of distribution, because of the necessity of buying and selling upon sample or otherwise, and because of the risk of fraud and misrepresentation, and consequently larger margins in trading. It was considered by the Department, however, that it would be infinitely better if such grades and qualities could be established voluntarily in the trades themselves, instead of by legislation, and policed by trade associations, as is the case in several old established trades. To this end a number of conferences have been held in different branches of the lumber, textile, paper and other trades."

There is some more in that paragraph, but that simply refers to this subject. I will read the whole paragraph, if you wish.

Mr. Darby: Just suit yourself, if you think it will throw any light on the subject, Mr. Keehn.

A. I might read the whole thing. (Reading.)

"The service of the Department has been to bring the different [fol. 848] branches of the trade, the manufacturers, wholesalers, retailers and representatives of larger consumers' associations together, and to develop committees of different branches of trades. The plan has been generally welcomed, and applications have been received from many trades for such assistance. The expert services of the Bureau of Standards, Bureau of Foreign and Domestic Commerce, and the other Bureaus of the Department, have been brought into service for technical advice in these matters; and results of important bearing upon the improvement of business ethics and cheapening of distribution have been attained."

I have been Secretary of these various Associations since 1905 and have had charge of the Reinspection Department. Prior to Mr. Robertson's trips among the mills in his standardization work, there were many complaints with respect to the quality of maple, beech and birch flooring shipped by the different manufacturers to different

points in the United States. Prior to that time the grading rules were rather meager and ambiguous. Consequently, the buyer did not always know what to expect when he bought the different grades and the seller did not always exactly understand what he was required to furnish.

Along in 1916 grading rules were compiled and the characteristics of the different grades were clearly defined. That work was done by a committee consisting of different manufacturers and was finally completed by Mr. Robertson and Mr. Fred R. Welsh, who, at that time, were official inspectors of the Association then in existence. Mr. Welsh also had had large experience in the manufacture of maple, beech and birch flooring. Mr. Robertson was one of the [fol. 849] leaders of the movement for the standardization of grades. Here is a copy of the grading rules of November 14, 1912.

(Said grading rules marked Defendants' Keehn Exhibit 15 for identification.)

(Said Keehn Exhibit 15 was received in evidence.)

In 1920 the shape of the flooring was standardized in order that the product of the different mills would match up. Prior to that time the grades had been standardized as to quality but the matching had not been standardized, so that a man could buy flooring of a mill in Wisconsin, the flooring of a mill in Michigan and the flooring of an Eastern Lower Michigan mill or of a Saginaw Valley, and use it altogether in one building. A standard thickness was adopted and steel templates and blueprints were made and furnished to each member so that all of them would know exactly what to do in manufacturing their flooring.

This made it necessary to bring out a new edition of the grading rules, which was done on July 29, 1920. On page 6 of said grading rules under the title "Standard Measurement," there appears the following language:

"The actual thickness of 13/16 inch and thicker flooring is 1/32 inch scant of the thickness used as the trade name. The 1/32 inch scant is taken from the under side of the flooring, leaving the thickness of the wearing surface unchanged."

In other words, the consumer of the flooring got just as good services as before because the wearing surface of the flooring was not changed.

Q. What particular experience led to or brought about that change of rule so that the flooring of one plant would be sure to match with the flooring of another plant?

[fol. 850] "A. During the war, as you probably all know, the Government was very much in need of lumber and flooring to carry on the construction of buildings, cantonments and things like that, and the business was handled through what were known as Emergency Bureaus; and it is really quite interesting to speak about this Committee of National Defense. On page 23 of the War Industries Board Price Bulletin No. 43, appears this:

"The Committee soon decided that both time and intermediate profits would be saved if Government agencies placed their orders directly with the mills. It was not possible, however, for the committee to handle the matter successfully, because of the lack of knowledge of the class of timber owned by each of the many thousand operators, their facilities, and their ability to meet special requirements. Representatives of lumber manufacturers from the forest producing sections were therefore called in the conferences, and arrangements were made with them to organize emergency bureaus, which would act as the authorized distributing agencies for such government orders as were received by them from government contracting agencies, on recommendation of the Lumber Committee."

Now, among the Bureaus that were organized at that time was the Northern Hardwood Emergency Bureau, organized November 24, 1917; and the members of the Maple Flooring Manufacturers Association, which was then in existence, made arrangements with the Northern Hardwood Emergency Bureau to furnish any maple, beech or birch flooring which the Government might require. In fact they placed themselves on record as being willing to put their whole [fol. 851] stocks of flooring at the command of the government, even if it was necessary to postpone the filling of orders which they had on their books. After the arrangement was made we of course kept very accurate records of what stocks were available at the different flooring mills; and there is where our statements of stocks on hand were very useful to the United States Government.

Q. In what way?

A. Because we could look at those statements; and if the Government wanted 100,000 feet of inch and a sixteenth by three and a quarter factory flooring, for a plant at Nitro, West Virginia, we could tell immediately where we could locate it.

Q. Did they send the orders to you direct,—to the Association?

A. In some cases. I think I should say, further, that the orders were mostly sent to us by the Northern Hardwood Emergency Bureau; they were placed with them by the Director of Lumber, whoever that was.

Q. The first bureau that you mentioned forwarded the orders for flooring, to the Association then in existence?

A. Yes; to me, as Secretary of the Association, to be allocated by me.

Q. And you did that?

A. I allocated the orders, and in all cases where it was possible we placed the orders with the mills that could give the most prompt shipment.

[fol. 852] Q. The closest?

A. And which were located nearest to the destination of the shipment—in order to save unnecessary expense in freight, etc. In some cases we were obliged to give them to mills farther off—where the urgency of the delivery was important.

Q. Now, some of those government orders required large quantities of flooring, did they not?

A. Yes, sir.

Q. And in many cases you were not able to get all the flooring, for prompt shipment, from one plant?

A. Yes.

Q. State that was necessary, in order to prevent confusion, and to facilitate the prompt use of the flooring?

A. Here is a typical order, dated October 10, 1918, (indicating) for the Department of Housing, Emergency Fleet Corporation—the construction to be at Erie, Pennsylvania; they asked for 198,000 feet of 13/16ths by 2¼ inch face No. 1 beech flooring. We placed that order with Mitchell Brothers Company, Cadillac, Michigan, 44,000; Cobbs & Mitchell, Incorporated, Cadillac, Michigan, 50,000; Hanson-Ward Veneer Company, Bay City, Michigan, 54,000; Northwestern Cooperage & Lumber Company, Gladstone, Michigan, 50,000; a total of 198,000. Then we wrote a letter—the first part I read, from a carbon copy of a letter I wrote October 4, 1918, to Mr. W. G. Luce, Chief of Construction, Department of Housing, etc., [fol. 853] Philadelphia. Then we followed that up with a letter like this, addressed to him, “Referring to our letter of October 4, regarding flooring for the above named Erie, Pennsylvania, order, please issue instructions to have the different shipments of flooring kept separate when received at destination, as the matchings of the different mills are not exactly uniform, and may not readily go together. The two Cadillac makes are of uniform matching, but we are not certain about the other two, both in respect to each other, and in respect to the Cadillac make.”

Here is another example, if you would like to have it.

Q. All right.

A. Here is another lot of flooring—139,800 feet of 13/16ths by 2¼ inch face No. 1 maple flooring, on government order for Erie, Pennsylvania. That order was divided between the East Jordan Lumber Company, East Jordan, Michigan, Foster-Latimer Company, Mellen, Wisconsin, West Michigan Flooring Company, Manistee, Michigan, R. Connor Company, Marshfield, Wisconsin, J. W. Wells Lumber Company, Menominee, Michigan, Bigelow Cooper Company, Bay City, Michigan, in the following proportions, though it is hardly necessary to name them:

East Jordan Lumber Company, 19,800 feet; Foster-Latimer Lumber Company, 20,000; West Michigan Flooring Company, 25,000; R. Connor Company, 25,000; J. W. Wells Lumber Company, 25,000; Bigelow Cooper Company, 25,000; a total of 139,800. October 9 is the date of the order.

[fol. 854] October 10 we wrote to the United States Housing Corporation, Erie, Pennsylvania:

“Referring to our letter of the 9th regarding flooring to be furnished on above named order, will you please issue instructions to keep the different shipments of flooring separate when they arrive at destination, and to avoid mixing the different makes of flooring,

in laying the floors. The matching of the various mills is not exactly uniform, and consequently the flooring from different mills may not readily go together in all cases, although in many cases flooring from one mill fits readily with the flooring from other mills."

Of course we could repeat that, in many other cases.

Q. There were many other orders received by you from the Government during that time?

A. Yes. Here is one that we might speak of, where the Northern Hardwood Emergency Bureau, made particular mention of this fact, too.

Q. About what?

A. About keeping the flooring separate.

Q. That is all right. Of course, they would have to be kept separate, then?

A. Yes.

Q. Those instances that you have given are typical?

A. Yes, sir.

Q. And there were other orders placed for large quantities of flooring, during that time, were there not?

[fol. 855] A. Yes, sir. I think that during that time we must have furnished to the Government somewhere between two million and two and a half million feet of maple, beech and birch flooring; and we made a wonderful record on shipments. I remember one time that we got a telegram that the Government must have some flooring at Nitro, West Virginia, immediately. I got the telegram in the morning about eight o'clock, and gave the order to the Strable Lumber & Salt Company, in Saginaw, Michigan, because I knew they had the flooring on hand. They received the telegram at ten o'clock in the morning. We made it very urgent, in our dispatch—government business, insist on getting car promptly, and so forth. They got the car, and had it loaded, and on the way at three o'clock in the afternoon of that day. And then we were instructed to telegraph the car numbers to the receiving agents for the Government, which was done by the Strable Lumber & Salt Company; they could hardly believe it; they thought that they had faked the car numbers.

Q. Did any of the members of the Association have any trouble with any of those shipments, either with respect to the quality of the product or as to the price of the lumber?

A. None whatever. No complaints were made by the government in any particular whatever; and they accepted all that flooring according to the standard grading rules of the Association which was then in existence.

[fol. 856] At the request of the Government, we filed a schedule of prices f. o. b. mill, also f. o. b. factory with the Government authorities. The Associations at that time did not have any fixed prices for their products and these schedules of prices were compiled at the request of the governmental agencies in question. We agreed with the Government to take certain business on certain bases. In order to embody that agreement in writing, we filed a schedule of

prices. We were requested by the Government to file a schedule of f. o. b. mill and delivered prices.

Q. But up to that time, previous to that time, at that time or since that time, has there been an association price for any grade whatsoever of either maple, beach or birch flooring, that is, an association price?

A. No, because the associations does not manufacture flooring, and does not sell any flooring, and it would have no price on its products.

Q. Have any of the associations that you have ever been connected with attempted in any way—I will withdraw that. Has the present defendant association ever attempted to fix or put a price upon any flooring that is manufactured by any of the members?

A. No, sir.

Q. Or by all the members?

A. The members have always been at liberty to sell their flooring at whatever prices they pleased to sell it at.

It was our war experience that led to the standardization of the shape, also our previous business experience. This standardization of shape has been of great benefit to the public. For example, it [fol. 857] made it much more convenient to the lumber dealer to have the flooring go together, that was manufactured at the different mills; they would buy a car lot of flooring of one man, and then they could buy a car lot of flooring of another man, and they could mix it together in their sheds, if they wanted to, and deliver both makes of flooring out on the same job, without difficulty.

Q. I think I asked in the beginning, what has been the effect upon the number of complaints by buyers of standardized grades, and defining them, and the standardizing of the shapes?

A. The number of complaints has been very much fewer, in number. It seems to have been a matter of education, to interpret the grades. Then people knew what to expect. And after Mr. Robertson completed this work, and after the grading rules were published in 1916, in which the grades were interpreted, and it was clearly defined what goes to make up a grade Clear, and what goes to make up a grade of No. 1, and what goes to make up a grade of Factory, and these grading rules having been given wide publicity by distributing them all over the United States, among architects and wholesale lumber dealers and retail lumber dealers, everybody was in a better position then to interpret the grades that he purchased, and consequently there were very few complaints, comparatively speaking.

The manufacturers have been educating themselves and the public at the same time. I think that the quality of the grade has been improved by standardization. There has been no difficulty in adjusting whatever disputes have arisen between the buyer and the manufacturer. The custom is when the complaint is received by a [fol. 858] manufacturer from a customer, the manufacturer telegraphs or writes us with respect to it. If the complainant is willing to have an official reinspection made and agrees to abide by it, we immediately send him an inspector. Mr. Robertson has done a large

amount of work of that kind. He has taken trips to distant states when the amount involved was quite small. We desired to satisfy the buyer that the Maple Flooring Manufacturers Association meant what it said when it standardized its product and that it proposed to stand behind it. If the members had shipped something that was not up to the standard grade, then the member must make it good, or the Association would do so in order that the public might be fully protected.

The industry as a whole has a much higher standard now. I recall the case of a shipment of flooring to Syracuse, New York, which was ultimately received by the Horn Lumber Company. This flooring was shipped by William Horner. A complaint was made by the purchaser. The flooring was thereupon reinspected by Mr. Tucker, who sustained the manufacturer. The buyer thereupon paid \$101.72 to cover the expense of the reinspection. Although the buyer had agreed to stand by the inspection, he still complained to the Association. We wanted to do what was right and we had our Chief Inspector, Mr. Robertson, go to Buffalo and inspect the flooring. Before this was done I told the buyer that if Mr. Robertson did not sustain the previous inspection, that I personally would be responsible for the return of the \$101.72. Mr. Robertson reinspected the flooring and sustained the buyer. In that case he found that the flooring contained about 8% variation or offgrade, whereas the grade [fol. 859] ing rules allow only 5% variation or offgrade in feet below the grade specified. In accordance with my understanding with Charles Horn Lumber Company I immediately sent them a check for \$101.72. This was a very unusual instance. Adjustments are usually made by the manufacturer. The instructions we gave Mr. Robertson with respect to this job are the instructions we always give inspectors, namely, to be impartial and to report strictly according to the facts without respect to whose ox might be gored.

William Horner, Charles Horn Lumber Company, Chicago, and Wilson & Greene Lumber Company, Syracuse, New York were involved in the shipment to Syracuse, New York and the following letters and Defendants' Keehn Exhibit 17 and Defendants' Keehn Exhibit 18 relate to this matter.

(Through inadvertence there was no Defendants' Keehn Exhibit 16.)

(Said Exhibits were received in evidence.)

Defendants' Keehn Exhibits Nos. 19, 20 and 21 are copies of communications sent to the Department of Housing, Emergency Fleet Corporation, and to the United States Housing Corporation, Erie, Pennsylvania, with respect to orders previously mentioned by me and the keeping of the different shipments of flooring separate when they arrive at destination.

(Said Exhibits were received in evidence.)

Here is a letter that was written to us by William A. Durgin, Chief of the Division of Simplified Practice of the Department of

Commerce, Washington, D. C., dated July 11, 1922. The first paragraph of said letter reads as follows:

"The preliminary lumber conferences with this Department in [fol. 860] May showed the wide interest of all lumbermen in questions of guaranteed inspection, uniform grading, nomenclature and simplification of sizes."

(Said letter marked Defendants' Keehn Exhibit 22 and received in evidence.)

All flooring manufactured by members of the Association bears a uniform trade mark. For instance, on the back of a piece of flooring or on enough bundles to identify the flooring, the manufacturer will put either his own name or "M F M A" followed by a number, which indicates the identity of the mill at which the flooring was produced. In order that the numbers may not be mistaken for grade numbers, 20 is added to the identifying number of the Association member as a trade mark number. For instance, the identifying number of W. D. Young & Company is No. 2 and the trade mark of W. D. Young & Company stamped on the flooring manufactured by said Company so as to identify the flooring is 22. For instance, their flooring would be stamped "M F M A—22". If the figure 2 were used, it might be misconstrued as being of second grade flooring, whereas it might be either Clear or Factory.

In some cases the flooring is stamped on the back by means of a steel die as it comes from the machine. In other cases it is stamped by means of rubber stamps which we furnish members of the Association. The letters "M F M A" stand for Maple Flooring Manufacturers Association.

Some manufacturers also have their own brands of flooring, such as "Acme," "Electric," "Ideal," etc. and such brands are also stamped by means of steel dies upon the back of the flooring, so that it is [fol. 861] always easy to identify flooring shipped by the different members of the Association and to know exactly what mill produced any particular lot of flooring.

Mr. KEEHN was called for further examination on behalf of the defendants on October 22, 1923 at Chicago, Illinois, pursuant to the stipulations hereinbefore mentioned.

Direct examination.

By Mr. Johnston:

I am Secretary of the Maple Flooring Manufacturers Association and as such have charge of its files and records and of the compilation of all data which I received from the members. I have been connected with previous Associations in that capacity, and during all that time I have had charge of the collection and compilation of such data.

I started in the lumber business in Indiana in 1878, where I remained for five years, and then came to Chicago in 1883 and engaged in the business of lumber on the cargo market. I continued this business for about 25 years, after which I became connected with trade association work. During all the time above mentioned I have been more or less familiar with the lumber business. As Secretary of the Maple Flooring Manufacturers Association I have endeavored, from time to time, to have prepared lists of the names and locations of all concerns in the United States engaged in the manufacture of maple flooring. The list you hand me was prepared by me. The said list is one which was introduced in evidence as Defendants' Gordon Exhibit 1 when Mr. Gordon's deposition was taken, and is a list of manufacturers of maple, beech and birch flooring in the United States who are not members of the defendant [fol. 862] Association so far as we are able to ascertain from the sources available to us. The list was compiled from lumber trade papers, from manufacturers' lists furnished by Buckley, Dement & Company of Chicago and from information obtained by means of correspondence with members and non-members as to their knowledge of persons and firms engaged in the manufacture of maple, beech and birch flooring. There may be other manufacturers, but so far as I know, the list is reasonably accurate and complete. As a matter of fact, I think there are several manufacturers that are not on this list that we heard of afterwards. To the best of my knowledge, all of the 70 names on said list are the names of persons, firms or corporations now engaged in the manufacture of maple, beech or birch flooring. I should say that the manufacturers named in said list are largely engaged in the manufacture of maple flooring as distinguished from beech or birch.

We recently applied to the Department of Commerce, Bureau of the Census, for lists of names of manufacturers of maple, beech and birch flooring in the United States, and they promised to send us one next summer. They cannot furnish us any additional data at this time.

I furnished the figures contained in Defendants' Gordon Exhibit No. 4 to Mr. Gordon and Mr. Grant Keehn. Defendants' Gordon Exhibit 4 contains a table showing the proportion of the total cut of maple lumber in the United States used by members of the Maple Flooring Manufacturers Association and a column of figures showing in millions of board feet what purports to be maple flooring production of all of the members of the Maple Flooring Manufacturers Association. Said Exhibit also includes figures on beech and birch flooring. The maple is about 90% and the other 10% is divided about equally between the beech and birch.

I obtained the figures shown in said Exhibit from statistics furnished to me by the members of the different Associations from 1912 to 1922 inclusive. I have carefully compiled or supervised the compilation of those data, as well as all other data which I furnished to Mr. Gordon and Mr. Grant Keehn. I believe that all the data are accurate.

We have furnished data from our files on the production of maple

flooring and other matters connected with the maple flooring industry to the Department of Commerce, Bureau of the Census, at their request from time to time. Some of the data have been used by said Department in the Survey of Current Business since May or June, 1922. We have also furnished considerable information to the Federal Reserve Bank at its request and to the Lumber trade papers.

It is now and has been my duty, as Secretary of the present Maple Flooring Manufacturers Association and of the preceding Associations, to secure from the members data such as those embodied in these tables with respect to the amount of maple flooring produced by the members. It also is and was my duty to compile those data, and so far as possible, to see that the data furnished me by the members were correct. To the best of my ability, I have noted all those records and prepared all those data accurately and correctly.

[fol. 864] Defendants' Gordon Exhibit 6 contains a table called "Index Prices per thousand feet of the product, based upon average prices received by Maple Flooring Manufacturers Association members f. o. b. Michigan and Wisconsin mills." I furnished the data embodied in that table to Mr. Gordon and to Mr. Grant Keehn; that is, I furnished the data concerning the prices, but I am not certain whether we furnished the data regarding the table or not. I furnished the data from which the table was prepared. The table is an index table which Mr. Gordon and Mr. Grant Keehn prepared from the data I furnished them. What I furnished was the f. o. b. Michigan and Wisconsin mills prices of Association members for the years 1913 to 1922 inclusive and the first five months of 1923. Those data were compiled by me in the same way as the other data about which I have testified and were accurately kept and filed.

I have not yet completed the table of figures showing the quantity of maple, beech and birch standing timber owned by members of the Maple Flooring Manufacturers Association. We expect to hear from two or three other members regarding their holdings of standing timber. We obtained information from the Forestry Department regarding standing maple, beech and birch timber in the United States, I think in 1920. Then we wrote them a letter regarding what may be the standing timber now allowing for the cut of 1920, 1921 and possibly 1922. The Forester's Report was published in April, 1923 and I think it included the cut of 1920. Allowing for that cut, we made an estimate that there are now about [fol. 865] 86 million feet of standing maple, beech and birch timber in the United States, of which our members, as near as I can determine, own or control less than 2%. I would say that it might figure out perhaps 1½%. My calculations were based upon the figures which I have received from the members of the Associations. These figures are almost complete.

Defendants' Gordon Exhibit 7 contains a table which is headed, "Price of 13/16ths x 2¼ Clear. Average price realized by Maple Flooring Manufacturers Association members f. o. b. Michigan and

Wisconsin mills." There are also tables with respect to No. 1 and factory grades. I furnished all the data from which those tables were prepared and these data were obtained by me in the same manner heretofore testified. These data were carefully kept and recorded and are accurate to the best of my knowledge and belief, I not having made all of the calculations myself.

Attached to and made a part of Defendants' Gordon Exhibit 10 is a table headed, "New Orders Booked Monthly 1912 to 1923 in Thousand Feet for all Flooring by Fifteen Identical Members of the Maple Flooring Manufacturers Association." I furnished those data to Mr. Gordon and Mr. Grant Keehn. Said data were taken from my records, which I regularly keep and those records are accurate and correct, to the best of my knowledge. Every effort was made to keep an accurate record of the data received from the individual members and to correctly and accurately compile the same. [fol. 866] Attached to Defendants' Gordon Exhibit 11 is a table showing statistics of production, new orders, unfilled orders, stocks on hand and shipments in thousand feet of identical fifteen members and of the present twenty-two members. The data contained in that table were taken from my books and records and are accurate.

Attached to the same Exhibit is a list of the fifteen members of the Maple Flooring Manufacturers Association who have been described by Mr. Gordon and Mr. Grant Keehn as being the so-called "constant" or identical members through a period of years in this Association and in preceding Associations. I furnished that list to Mr. Gordon and Mr. Grant Keehn from my files and record and said list is true and correct.

Attached to Defendants' Grant Keehn Exhibit 21 is a table, the first part of which is entitled, "Average manufacturing and marketing costs per thousand feet of flooring produced of reporting members of the Maple Flooring Manufacturers Association." It has been a part of my duties as Secretary of the Association to collect such data. I have kept and compiled the same as part of my duties as Secretary and such figures are accurate and correct to the best of my knowledge.

Attached to and made a part of Defendants' Grant Keehn Exhibit 22 are tables, the first of which is headed, "Unfilled orders for all flooring at end of month, in thousand feet, 1912 to 1923, of fifteen identical members of the Maple Flooring Manufacturers Association. The data embodied in that table were furnished by me to Mr. Grant Keehn and Mr. Gordon and represent the correct and accurate [fol. 867] compilation of the figures received by me from those fifteen members, to the best of my knowledge and belief. A large amount of this work I did not do personally, but I directed and caused it to be one. That applies to practically all these tables, including the table which represents stocks of flooring on hand at end of the month. Those data were furnished me by members at my request. The same also applies to the next table, headed, "Production monthly, in thousand feet, of all flooring, of fifteen identical members." Those three tables, as well as all the other tables con-

taining data are made up of figures which were recorded and compiled in my office under my direction and supervision. I furnished to Mr. Gordon and to Mr. Grant Keehn the data from which was prepared the chart, Exhibit No. 28, which contains a comparison of f. o. b. mill prices realized by the members of the Association for the purpose of showing the lack of uniformity in those f. o. b. mill prices. Those data were taken from files regularly kept by me in compiling and recording the data received from the members and are true and correct.

Attached to Defendants' Exhibit 29 of the testimony of Grant Keehn are tables showing the range of f. o. b. mills selling prices of Michigan and Wisconsin members during 1913 to 1923. I furnished all the statistical data from which the three tables attached to said Exhibit were compiled. The fourth table attached to and made a part of said Exhibit, showing the so-called average [fol. 868] costs, were furnished by me from records that I kept as the reports were received from the members. Said data were given to Mr. Gordon and Mr. Grant Keehn. We made the calculations though because the reports of the members come in in total and then we work it out ourselves.

All this work was done under my supervision and direction and was carefully and accurately done. As far as I can determine, all the information that I have supplied to Mr. Gordon and Mr. Grant Keehn for use in the preparation of the tables and charts which have been introduced in connection with their testimony is information which, as Secretary of the Association, I received from the members or had compiled from data supplied by members. I have given that information to Mr. Gordon and Mr. Grant Keehn in exactly the same way that it was shown by my original records without in any wise coloring, changing or varying it. I gave it to them just as it stands in our records.

References were made by Mr. Grant Keehn in his testimony to normal capacity and production capacity of members. The figures showing the normal capacity of the members of the Association for the production of maple flooring were taken from my records and files.

Cross-examination.

By Mr. Thompson:

The normal capacity was determined by me as follows: I wrote to the members last year for a statement of their normal capacity. I did that at the request of the Department of Commerce, Bureau of the Census, and compiled the information given me by all the members and sent it to the Department of Commerce, Bureau of the Census. We also have a list of the normal capacity of the 22 [fol. 869] plants in the Association at that time and of the 15 plants that were used in this connection. Each member made up his own schedule showing his capacity, his working hours, the number of working hours a week and other things like that in detail, and we will

be very glad to give you a copy of the reports that we received from the members and of the final report that we sent to the Department of Commerce, Bureau of the Census.

[fol. 870] DEPOSITION OF MARTIN H. ROBERTSON, TAKEN, PURSUANT TO STIPULATION, AT CHICAGO, ILLINOIS, ON OCTOBER 18, 1923

MARTIN H. ROBERTSON, being duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

I am 68 years of age and live at East Jordan, Michigan. I cannot be present at the hearing in Grand Rapids in this case. My health is impaired and for some years I have been going south during colder weather. I am not in any active business now except for occasional trips that I make for the Maple Flooring Manufacturers Association.

I have been connected with various features of the maple, beech and birch flooring industry for 33 years. I manufactured maple, beech and birch flooring from 1903 to the early part of 1905. Before I built the plant which I operated from 1903 to the early part of 1905, I had been connected with the East Jordan Lumber Company, who manufactured some flooring for local use only.

The plant that I built in 1903 was located at East Jordan, Michigan. In operating that plant I purchased the rough lumber on the open market. I found that I could not operate the plant at a profit if I had to buy the rough lumber, so I closed down the mill and a little later rented it to the East Jordan Lumber Company. I could not operate the plant profitable because the rough lumber could be sold at a price so nearly equal to the price that could be obtained for the manufactured product. Now owning any timber, I was forced to buy the rough lumber from other producers, principally [fol. 871] from the East Jordan Lumber Company because of our location. I was not on any trunk line, hence could not take advantage of what is known as the stop-off privilege for manufacturers. The stop-off privilege is a privilege by which a through rate of freight from the initial point to final point of destination is obtained. After shipment of the raw product from the initial point, the said raw product is taken off at the mill or intermediate point, converted into a finished product, reloaded and shipped to final destination. By this means the advantage of a long haul and lower railroad rate is obtained. When the stop-off privilege is obtained, the finished product is rebilled on the original bill of lading.

After I rented my mill to the East Jordan Lumber Company, I became Sales Manager for said Company, which had a saw mill, a planing mill and a shingle mill and operated in connection therewith the flooring mill. The East Jordan Lumber Company owned

a large stand of timber and were not compelled to buy rough lumber. I ran the flooring plant for the East Jordan Lumber Company until 1912 and also was the Sales Manager of their entire product. The East Jordan Lumber Company manufactured maple flooring, but not any beech or birch. Their annual output of maple ran from 4½ to 6 million feet. Their flooring was shipped from the Atlantic Ocean to the Rocky Mountains and from the Lakes to the Gulf. I travelled all over the country and established trade in all the principal cities.

The East Jordan Lumber Company belonged to a Maple Flooring [fol. 872] Manufacturers Association. I think we joined in 1905 or possibly 1906. I attended the meetings of the Association from 1905 to 1912. I standardized the mills for the production of maple flooring and began this work in April, 1914. I am familiar with the conditions which brought about the standardization of the grades of maple, beech and birch flooring.

Q. Will you state them—what you know of your own knowledge as a manufacturer and seller of that flooring?

A. The Association, by reasons of its having adopted a set of rules, each member becomes in a sense an underwriter for every other member; that is, he is re-ponsible for the grades prescribed in those rules. We had what was called an Arbitration Committee, or official inspectors, whose business it was when a complaint was lodged with a member, and it could not be adjusted between the shipper and the consignee it was referred to this committee, and some member, or more, one member or more of this committee inspected, and heard the complaint and passed judgment whether or not the complaint was justifiable or not. It became a burden to the Association. I was one of this committee, and I did a good deal of traveling, and I saw that there was a wide diversity of quality in what was termed the same grade although we had the same rules; both the manufacturer and the buyer had the same rules, but they put different interpretations on those rules; there was not a specific declaration in the rules relative to the smaller, intricate features of the application of a rule. Hence what seemed to be a great grievance [fol. 873] to one man might be much less to another; and so those differences of opinion continued until it became, as I say a burden; and I agitated myself, and so did some others, until we had a standardization of the mills, both as to the grading of the stock, and the manufacturing of it, and all features pertaining to it. We would always have this difficulty—and we would always be having to adjust these differences; and when I ceased to operate, in 1912, I was no longer in touch with it, but in the winter of 1913-1914, I received a letter from Mr. Keehn saying that the Association had finally determined to undertake the standardization of the product, to avoid these continuous complaints, and asking me if I would undertake the matter of standardizing the mills.

The grades that were generally recognized at that time were Clear, No. 1 and Factory. I do not know how long such grades have been generally used. When I entered the flooring business, I found that maple flooring was generally classified into the three grades above

mentioned. I think that all lumber is sold according to some classification or specification of grades. The flooring grades at that time were not clearly defined.

Later on we had a committee appointed composed of a representative from each of the mills, and this committee and I more carefully defined the grades. In 1914 I made three several trips and visited each mill on each of these trips. On my first trip I paid particular attention to the grading of the product as it passed all the machines. I also got a general opinion as to how each one was doing his grading. I took the high and the low and the intermediate and tabulated all these data and from them I arrived [fol. 874] at a standard. I did this after visiting the mills three times and going over the grading. I also made a list of the types of machines used, number of machines, etc. at each plant. My first trip was largely an observation trip and in order to learn the conditions at the different mills. My first trip was made in April and May. I think my second trip was during the mid-summer of 1914. On the second trip I examined conditions more thoroughly and discussed with the various managements imperfections in machinery and in the handling of the product. My third trip, in 1914, was made in October, I think.

From the data obtained on these three trips, I formulated a standard for the different grades. This standard was neither the best nor the clear grades, first; and of a hundred pieces on the average sixty-five will all lumber make the poorest. I arrived at a general average of all the mills and from that I prepared our standard.

Q. You say you formulated a standard. How did you formulate the standard?

A. I took a hundred pieces, for example, a hundred pieces of say the clear grades, first; and of a hundred pieces on the average sixty-five of those would stand up in what I call the high strata; and thirty-five of them will fall below, down toward the lower extremity or lower edge of that strata.

Q. But the whole hundred pieces would be clear?

A. The whole hundred pieces would be clear. None of them will contain any defects which are not allowable. We have what we call allowable and unallowable defects. What we call the unallowable defects may occur in a grade; if so, we describe that, and throw it [fol. 875] down into the next grade below.

Q. What is the next grade below?

A. The next grade below is our No. 1.

Q. And the grade below that?

A. Is our Factory.

Q. Now, can you graphically represent the method by which you formulated this standard for the grading of the product.

A. I think we drew, according to my interpretation, something a while ago, and it will save my drawing it again, if we have it.

Q. Draw that, using horizontal lines, if you think that is right (handing a piece of paper to the witness).

(The witness sketched a diagram, etc., upon the sheet of paper.)

Mr. Darby: Mark that Defendants' Robertson Exhibit 1 for identification.

(The sheet was marked as requested.)

Mr. Newman: Mr. Thompson suggests that you do that in the rough, and then we can have one substituted for it.

A. It is understood by lumber men practically no two pieces are exactly alike, as no two faces are exactly alike; hence we cannot say that they all, in the clear grades, are alike in any respect; there will be some distinguishing feature which will distinguish one piece from another. Now, those pieces which are almost free from all defects are what I call my upper strata of the clear grade; and those which have allowable defects are in the lower strata. That may grade from one allowable defect to the extreme number of allowable defects; but they are almost free from all defects, in the upper strata. Now, I found, after giving this the three times interpretation, that the standard rested, at sixty-five pieces out of a hundred, [fols. 876 & 877] rested in the upper chamber—as it were, of this diagram—sixty-five pieces will run in what I call the high. That I have termed it all through my report, "high." And thirty-five pieces in the lower strata, which is denominated "low." Now, that holds good in the No. 1, as well, sixty-five high, thirty-five low. The factory grade rested first at fifty-nine pieces high and forty-one low. It afterward was advanced to sixty high and forty low, where it stands today, or at the last inspection I made.

Q. Now, these sixty-five and thirty-five in the clear, that is, in making up a lot of clear 65 pieces out of a hundred belong in the upper strata and 35 pieces in the lower strata, but it is all clear?

A. All clear.

Q. And the same holds good with respect to the No. 1?

A. Yes, sir.

Q. Now, you recommended then, that in making up a shipment of clear, 65 pieces, or 65 per cent of the clear should be in the upper strata and not more than 35 per cent in the lower strata?

A. Approximately that. Of course the matter of grading, at the grading tables, is a speedy operation. He handles several thousand pieces a day, the grader does, and necessarily must handle them pretty fast; he is human, and so he necessarily makes some mistakes. But approximately we get it at about that.

Q. Now, when this agitation began, and when the agitation for standardization first began, were all the manufacturers in favor of it?

A. Oh, no. At first a number of them treated it quite indifferently, and thought that it would be an impossibility to accomplish [fol. 878] it; but later on,—before I undertook it, it was agreed that they at least would abide by an initial trip, that is, the majority, a large majority, would abide by an initial trip and see what we produced; and they were so well satisfied with it that it has been kept up ever since.

Q. Now state more fully, if you can, the conditions that ob-

tained in the industry which led to the movement for standardization?

A. There was room for complaint. Many times when I would go out on these re-inspection trips I would find that the manufacturer had by some means misinterpreted his grade and there was cause for complaint. The same dealers, or the same consumer, whichever it might be, may have bought another car, of the same mill, and the grade did not correspond—there was somewhat of a difference, quite a difference, in the grading of the same grade from the same mill.

Dissatisfaction of buyers with grades discredited the whole industry because each manufacturer was somewhat of an underwriter for all the members belonging to the Association. My recommendations were heartily received by the members of the Association and I also received many compliments from the lumber trade in general because of the very satisfactory results that had been accomplished.

I made reports to the Association of my different trips. These reports stated conditions as I found them at each member's plant. The plants of the members were designated by the respective identifying numbers of the different members. These reports were sent out to the different members. Each member received a report only of conditions that I found at his plant and the comparative report, [fol. 879] which merely showed the general average with respect to grading for purposes of comparison.

On my first trip I did not visit the mill of Nichols & Cox Lumber Company of Grand Rapids because they objected to standardization and did not want any outside interference with their methods of manufacturing.

(Defendants' Robertson Exhibit 1 for identification received in evidence.)

Defendants' Robertson Exhibit 2 for identification are copies of my reports that I made from time to time. These reports correctly state conditions that I found during my visits to the mills during 1914.

Mr. Darby: I notice on these various sheets, in Defendants' Robertson 2, certain figures. For instance, referring to High and Low and No. 1 under "Clear" and High and Low and Clear under "No. 1," and Factory, High and Low and No. 1 and No. 2 under "Factory," and the percentages that you find there, I wish you would explain what you mean by that.

A. Referring to the inspection of Plant No. 1, the inspection showed that their grade of Clear stood at 62 High and 38 Low, and contained 4.5 per cent of No. 1 or the grade below. The No. 1 stood at 61 per cent High and 39 Low, and contained 2 per cent of Clear and 2 per cent of Factory. Middle grade may contain some of each of the one below and the one above. The Factory grade stood at 61 per cent High and 39 per cent Low, and contained 3 per cent of No. 1.

Q. When you say that the Clear at the No. 1 Plant, or T Wilce

Company's Plant, or what is called on the Defendants' Robertson [fol. 880] Exhibit 2, Plant No. 1, showed 62 High and 38 Low, what does that mean? 62 what High?

A. Out of a hundred pieces 62 per cent would be of the better quality or lie in the upper strata; and 38 would be of the more inferior quality and lie in the lower strata, or down toward the line of No. 1.

Q. But it would all be clear?

A. It would all be clear, yes, sir.

Q. And you say 4.5 per cent of No. 1?

A. It contained that, in their grading.

Q. Yes. In other words 4.5 per cent of what they called Clear should really be classified in a lower grade?

A. Yes, sir, the next lower grade.

Q. And Defendants' Robertson Exhibit 2 also shows, on the bottom of the various sheets, the average of the Association?

A. All the mills, yes, sir, in the Association.

Q. And these sheets also show the result of your second trip?

A. Yes, sir.

Q. Referring to Defendants' Robertson Exhibit 2, I notice that you state that you found a considerable quantity of shallow back. What do you mean by that?

A. That the lumber was too thin to finish on the back.

Q. So that the flooring was—

A. Not dressed on the back.

Q. Is that a defect or a virtue?

A. It is a defect, if it is excessive. In the Clear we can only have 12 inches of it.

Q. What do you mean by shallow back?

A. Not finished on the back. It may be from wane. It may [fol. 881] be from thin lumber.

Q. In other words, the lumber out of which the flooring was manufactured was not sufficiently thick, in the first place?

A. Yes, or it may be from what we call wane.

Q. I see you have stated here that it was not much short tongue. What do you mean by that?

The Witness: Mr. Keehn, will you hand me a piece of that? (Indicating sample flooring). They will be able to get it better in the report, possibly, if I can explain it by a piece of the flooring there. Give me that beech piece (indicating piece of flooring).

There is a piece that is finished on both sides. Now then, if this shows rough—you see, it shows the machine cannot touch it—it is what we call shallow back. Or there may be a piece of wane on this side (indicating), in which this does not finish, on this side, or this, on this side—there will be a wane in there; that comes from the rotundity of the log, in cutting the log, and the piece has carried that rotundity along with it, and is unfinished. Now then, a piece of Clear can have 12 inches of that, but it must not extend through either end of the piece, so that it will have a bearing when you put it on the sub-floor or the joist, and it will not rot.

(Defendants' Robertson Exhibit 2 received in evidence.)

As before stated, I made a third trip during the fall of 1914 and made reports similar to those above mentioned.

Defendants' Robertson Exhibit 3 are true and correct copies of the reports made at that time.

(Defendants' Robertson Exhibit 3 received in evidence.)

[fol. 882] Mr. Darby:

Q. Referring to Defendants' Robertson Exhibits 4, 5, 6, 7, 8, 9, 10, 11 and 12, for identification, state what they are.

(Several documents, each consisting of a number of sheets fastened together, were thereupon marked respectively, as Defendants' Robertson Exhibits 4, 5, 6, 7, 8, 9, 10, 11 and 12 for identification, and were handed to the witness.)

A. Those are copies of the reports of these various trips, as indicated from my inspection book, checked back to it, the originals sent to the members and the copies left with Mr. Keehn in the office.

Q. State whether or not each of them is a true and correct statement of conditions that you found at that time, the recommendations that you made and the criticisms or praise that you extended?

A. They are.

Q. And those reports were made up along the same general lines as the reports of your first visit, which you have heretofore explained?

A. Yes, sir.

Q. I notice that on the first sheet of Defendants' Robertson Exhibit 4 for identification, the first sheet on Defendants' Robertson Exhibit 5 for identification, which relates to the fifth trip, and of Exhibit 6 for identification, which relates to the sixth trip, and the first sheet of Exhibit 8 for identification, which relates to the eighth trip, the first sheet of Exhibit 9 for identification, which relates to the ninth trip, and the first sheet of Exhibit No. 7 for identification, which relates to the seventh trip, the said sheet being white contains certain figures and data. Will you please explain [fol. 883] what they are, and how you made them up?

A. They are what I term a recapitulation of the report of each member. The first column of figures is the member's number that is used by the office for their work here. The next column shows the high strata. The next the low, and the next the No. 1, which is found in the Clear grade. The next column is the High strata, the next the Low, the next the Clear, and the next the Factory, as found in the No. 1 grade. The next column the High; the next the Low; the next the No. 1 grade, and the last the No. 2 Factory, found in the Factory grade.

The sum of all these—divided by the number of members inspected, makes the general average. This is where we obtained our general average, of that trip.

Mr. Darby: Defendants offer all the exhibits last named, and identified by the witness, in evidence, and if admitted we want them

given the same number as they bear for identification (showing documents to Mr. Thompson).

Said documents were received in Robertson Exhibits 4, 5, 6, 7, 8, 9, 10, 11 and 12 respectively.

Mr. Thompson:

Q. What was done with the recapitulation sheets?

A. They are attached to each of the copies, and remain in the office files.

Q. The recapitulation sheets were not sent to the members?

A. No, sir. Each of them has his part of it, and the general average as found on the bottom. We have these recapitulation sheets to get the general average from; and then his report was sent to him, showing his standing, and the general average standing, and his comparison he could make himself.

Q. Those, then, were merely the office memoranda, to obtain the general average?

[fol. 884] A. How is that?

Q. These recapitulation sheets were only for the office use?

A. Yes.

Q. In obtaining the general average?

A. In obtaining the general average.

Mr. Thompson: No objection to the exhibits.

Defendants' Robertson Exhibit 13 is a general report to the entire Association. It is not dated. I think it was the trip I made in 1919 or possibly 1920, after my inspection of the mills of that year. I think I made the trip during September, 1919.

(Said Defendants' Robertson Exhibit 13 was received in evidence.)

My only connection with any of the Associations that have existed since 1914 has been that of Official Inspector and Field Representative. As Official Inspector I inspect the work at all the mills and all phases of the manufacture of maple, beech and birch flooring. Whenever a reinspection is asked, after complaint made on account of grades by the buyer, I reinspect any flooring. Flooring is inspected by the mill and as it is produced and reinspections are made later upon complaint by the buyer as to grades. In the course of production at the mill, the flooring is inspected by an employe of the mill manufacturing it. A reinspection is made by the Official Inspector of the Association. The inspectors who have worked under me from time to time are Mr. Tucker of Chicago and Mr. Welch of Saginaw. I have from time to time during the past ten years made reinspections at the request of Mr. Keehn.

[fol. 885] Q. State what you did on these reinspection trips. What was the general procedure?

A. I would go to the point to which the shipment had been made, whether it was at the point where the consignee lived or not—sometimes it was not—but would go where the shipment was, and unbundle the stuff or have it unbundled, and reinspect it piece by piece to see

whether it conformed to the standard grades of inspection, of whatever grade it was shipped for; and if it did conform within the defined limit, which is five per cent of variation—five per cent in feet, of variation, we are allowed—if it was within that limit I would report no cause for complaint. If it was not I would report the condition, of how much it exceeded the limit, how much it exceeded the limit of our standard, and so report. We did not undertake the adjustment of it; that was left with the shipper.

Q. And there were times, were there not, when you found against the manufacturer, and in favor of the buyer,—and in favor of the manufacturer, and against the buyer?

A. Yes, sir.

Q. State whether or not you tried to perform your duties without any bias and regardless of whom you might find against?

A. I did. That is the only way I can do it, do it justly, and as I understood it, righteously.

Q. State whether or not after making a reinspection you made a report to Mr. Kechn of conditions as you found them?

A. I did.

Q. I hand you Defendants' Robertson Exhibit 14 for identification, and ask you to state what that is.

[fol. 886] (A document, marked as Defendants' Robertson Exhibit 14 for identification, was handed to the witness.)

A. This is a report of an inspection which I made May 15, 1922 of a shipment from William Horner, of Reed City, Michigan, to Charles Horn of Chicago, Illinois, and shipped direct to his customer, Wilson & Greene Lumber Company of Syracuse, New York, billed as 13/16 x 2 1/4 No. 1 grade.

Q. Do you recall the inspection in question, or not?

A. I do.

Q. State generally what the dispute was about, and what you found?

A. The complaint was that it was not up to grade, and I found that it was considerably below the standard, and so reported, as the report shows. Also I found defective machine work, as the report shows.

Q. Do you know of your own knowledge whether an adjustment was made by the manufacturer with the buyer, or not?

A. No, I do not.

Q. You do not know?

A. No, sir.

(Said Exhibit 14 was received in evidence.)

Q. I hand you Defendants' Robertson Exhibits 15, 16, 17, 18 and 19 for identification, and ask you to state what they are.

(Said documents, marked respectively as Defendants' Robertson Exhibits 15, 16, 17, 18 and 19, were handed to the witness.)

A. Do you want them separately?

Q. No. Just state generally what they are.

A. Generally?

Q. All of them together.

A. These are copies of my reports of the reinspection of these [fol. 887] various shipments from members of the Association to the consignee, as designated on each.

Q. And the report of your findings?

A. The report of my findings.

Q. State whether or not those documents are true and correct copies of the reports you made at that time?

A. They are, sir.

Q. You have not the originals in your possession?

A. The originals would be sent somewhere; I suppose someone here has the originals, with my signature on them. The originals were probably sent to the members, usually.

Q. Do they give typical instances of your reinspection work?

A. Yes, sir, they do.

Q. Some of these last exhibits which have been identified are in favor of the shipper, and some in favor of the buyer?

A. Yes, sir.

Q. You pursued no uniform rule or finding, one way or the other, I assume?

A. No, sir. I reported it as I found it, let the verdict be what it would.

Mr. Darby: Defendants offer those documents in evidence, as Defendants' Robertson Exhibits 14, 15, 16, 17, 18 and 19, and ask that they be so marked and attached and returned with the deposition.

Mr. Thompson: No objection.

[fol. 888] Mr. Darby:

Q. "What results have you noticed, if any, that have flowed from the efforts of the manufacturers to standardize their product?"

A. There are not nearly so many of these complaints; and we have very many fewer—very much less of this work to do, so much so that there has never been more than one of us that was necessary at a time, and much of the time none of us were doing any work whatever.

Q. You do not do so much re-inspection work now as you did in former years?

A. Not by a long way.

Q. Do you find that the buyers and the public generally are better satisfied?

A. Yes, sir, and I have means of knowing, because I see them now from time to time in my field representative work.

Q. In this field representative work you travel about the entire country, do you not?

A. Yes, sir.

Q. And you meet architects, contractors and dealers, retail lumber dealers, etc?

A. Wholesale and retail, both, yes, sir, and buyers.

Q. What have you found among them as to the sentiment that exists?

A. They expressed great satisfaction, that we have standardized the product, and thus made it very much more agreeable in handling the product.

Q. It has resulted in better trade relations, better relations between the manufacturer and the buyer and the architect, etc?

A. And the consumer, yes, sir.

Q. Are you familiar with the grading rules now in force, and that have been adopted by the defendant Association, which has [fol. 889] been in existence since January 1, 1922?

A. Yes, sir.

Q. What is your opinion as to the merit or lack of merit of those grading rules that have been in force since January 1, 1922?

A. What is my opinion of the rules?

Q. Yes. Do you consider that those rules are fair to the public and to the manufacturers, too?

A. Oh, yes, sir, I do; yes.

Q. Do you believe that in the practical operation of the flooring industry that those rules could be bettered in any way?

A. There are only one or possibly two criticisms that I might make on the rules, if you want those.

Q. What are they?

A. The No. 1 grade is a misleading term to those who are not acquainted with lumber terms. Many people who have no knowledge of the lumber business naturally think, when they specify No. 1 that they are getting the best grade, whereas it is not the best grade, with our grading system.

Q. What is the best grade?

A. The best grade is Clear; and hence sometimes that is a misleading term to those who are not acquainted with the grading rules.

Q. State whether or not you have made a recommendation to the defendant association that this condition be remedied?

A. Not recently. Formerly, when I was active in the business, I had a concrete example of the embarrassment that it produces, and naturally I criticised the term, and undertook to find some way to get it changed.

Q. Do you believe that any better rules could be made with respect to the Clear? Do you know of any means by which that could be improved?

A. No, I do not. It is as clearly defined as I could do it, and [fol. 890] as I could imagine that it was necessary to be done. It expresses a great deal in its practical application.

Q. Do you believe that that grade gives the buyer a good product?

A. I do.

Q. Now, what do you think about the grade, "No. 1".

A. Grade No. 1 is well defined. It is described specifically. It describes specifically what imperfections are allowable, and what

the buyer may expect. It goes on to enumerate very many things that he can expect in that grade.

Q. Otherwise than to change the name of the grade, do you believe that the grade could be improved?

A. Well—only by changing the name; only, the name would be more clearly understood by those who were not acquainted with lumber terms.

Q. But you believe that the public is given service, and are amply protected if they are given flooring which falls within that grade?

A. Yes, sir.

Q. Was the unsatisfactory experience you mention with a school board?

A. No.

Q. Or some one not familiar with lumber, or with a dealer?

A. It was a commercial building, a bank building that was being built in Johnstown, Pennsylvania. My customer ordered a car of No. 1; and I happened in Johnstown about the time of the arrival of the car, and I discovered that this flooring was to be used in this bank building, and I suspected at once that it was not the grade that ought to go in that building. I asked my customer to take it up with the bank trustees or directors and see if we could not substitute a Clear grade, for I knew that they wanted something better than a No. 1 in that building; and he declined to do this; and of course I did not care to interfere in his deal with his customer—it was not my customer—and he went on and put that floor-[fol. 891] ing in the First National Bank Building. I have never heard any complaint from it, except what I made myself, but, if you go into it, you will find the same conditions, and I think it is pretty unsatisfactory; it is like a man with a pair of bad shoes and a hundred dollar suit.

Q. Now, what is the difference between the Clear and the No. 1?

A. There are so many defects allowed in the No. 1 grade—they belong there; but it does not make a fine appearing floor; and that is what they wanted in that bank, or that is what I would want, anyway.

Q. It is good, serviceable flooring?

A. Surely.

Q. But it doesn't look so well to the eye?

A. The appearance; that is all; it is just as serviceable as the other is.

Q. But does not look so well?

A. It does not look so well.

Q. What do you think of the Factory grade now in use by the defendant association?

A. It is for service and not appearance. There are still many more allowable, and larger defects, are allowed in it than the No. 1 grade.

Q. What do you mean by larger defects?

A. Well, such as a larger knot. And larger shake, and larger brown dark streaks, and little hard streaks, that are found in lumber.

Q. The knots must be sound or tight, though, I suppose?

A. They must be sound, yes, sir.

Q. What do you mean by shake?

A. "Shake" is a condition that is produced in the tree by the wind twisting it, and separating the fibre, making it an open fibre. It is done by the wind, when the tree is younger, and it continues with the timber, and is found with the lumber.

[fol. 892] Q. Is a piece of flooring that contains shake good? Does it stand up under use or is it hard, or what?

A. Oh, yes, unless that shake is loose. If it is what is called a tight shake it stands; the fibre is there, the long fibre is there, and, whilst appearance is against it, the utility is there.

Q. Do you know of any means whereby the Factory grade now in force could be bettered, or do you think it is fair to the public?

A. I think it is very fair.

Q. You think it is fair?

A. Yes, I do.

Q. Now, as the result of your efforts to produce standard rules and interpretation and definition of the rules, would you say that the quality of the product as now manufactured is worse or better than the product that was manufactured say in 1914, and before that, or 1915? In other words, has the product been improved, or has it deteriorated since 1914?

A. The whole product cannot be improved, except by machining. If you take a hundred pieces of the natural production of the trees, or lumber, as it comes as a whole, you cannot improve that any, because you cannot re-make that lumber; you cannot improve the grades perhaps, very much, excepting to interpret them, and closely interpret what is called the off-grade, that is, the grade of No. 1 that may be found in the Clear and should belong in the No. 1. You cannot improve that any. It will all be in that space that I have defined there as belonging to the Clear grade. But you can't have it all in there; that is what we are expecting.

Q. What do you mean by cannot have it all there?

A. Well, there are what I call sharp practices, taking out a little of the upper Clear and putting a little of the upper No. 1 over into this Clear, and putting a little Factory over into the No. 1, and calling it a grade in which it does not belong. If I take out some of the upper strata of that Clear grade, it clearly lessens the value of that grade; it should all be there.

[fol. 893] Q. Assume that the rules are followed strictly, and a person is given 65 of the upper strata in the Clear and 35 of the lower strata, would you say that he now receives less service or better service than what he was receiving in 1914?

A. Better service than when?

Q. Than in 1914.

A. Before 1914?

A. Yes, or before 1914.

A. He is receiving better, because it is uniformly that; there is no departure from that rule,—that is, there is a slight departure, I had better put that; humanly speaking we do not get things perfect.

Q. Why not give them a hundred pieces of the upper strata instead of 65?

A. Because the timber would not make it, or the lumber would not make it; and if that is done, he has got to rob some other shipment to do it, in other words, it is what we call robbing Peter to pay Paul.

Q. You say the rules provide for 65 of the upper strata of clear and 35 of the lower strata?

A. Yes.

Q. It being all Clear. Now, why not give the buyer 100 of the upper strata?

A. Because the product will not make it, the raw material will not make it.

Q. Did he at any time ever receive 100 of the upper strata when he was buying?

A. Not unless some other shipment was robbed to do it.

Q. If the rules now in force are strictly followed by the manufacturer is the buyer in a worse or better position than he was before 1914?

A. He is in a better position.

Q. In what respect?

[fol. 894] A. Because they have come to a better knowledge of what this standard is and what it means, and they adhere to it very tenaciously—with some departures, of course, but they still adhere to that, and thus there is a uniformity. A new grader comes on, and they are afraid to trust that new grader until he has been instructed either by me or by the former grader, who has had his instructions from me; and thus that uniformity exists, not only in a given mill but in all the mills—so much so that it is surprising how nearly they conform to the standard. And that makes it very satisfactory to the buying public.

Q. Do you think calling this second grade No. 1 would be confusing to the retail or wholesale lumber dealer?

A. Oh, no, they understand all this.

Q. They know that?

A. Yes.

Q. How about architects?

A. Architects quite generally understand it, too. They must inform themselves before they specify; so they quite generally understand it, too.

Q. It is likely to be misleading, though, to members of school boards?

A. The consuming public.

Q. Or someone who is not in the habit of buying lumber, and who would happen to buy it direct from the manufacturer instead of from a dealer?

A. Well, they might as in this case in Johnstown. They bought from the dealer, but they specified No. 1. He thought they wanted No. 1, and ordered it for them.

Q. I wish you would explain what is necessary to be done in the manufacture of maple, beech and birch flooring, I wish you would begin with the tree in the forest, and follow the different processes right straight through, to the flooring.

A. The first move, as it now is practiced, is to establish camps [fol. 895] in a given tract of timber, where they are going to operate. These camps must be suitable for the accomodation of the men who are to operate in felling the timber, which is the next process—cutting it into suitable length for saw timber. This is followed by the skidding crew, who skid it to either a logging road or a spur of the railroad if we transport by rail. It is then brought to the mill, dumped into a pond of water, which in the winter season is heated; this is for the purpose of cleansing the log from any sand that may have accumulated in the bank, in the skidding process. It is then taken into the sawmill, which has usually a band saw or circular saw, which cuts the log into boards, or flitches, sometimes. It then goes to the re-saw, in most mills, where it is resawn from these larger flitches to boards of the required thickness which in flooring is one inch. From there it goes to what is called the edging saws, which are sometimes a single circular saw, sometimes a single band, sometimes a gang of each of these—where it is cut into suitable widths, and the larger defects are removed. And from this it goes to the trim saws, trimming out more of the unallowable defects. It then goes to the grader, who grades it for the piling. It is then transferred—

Q. Just a moment, you are speaking now of the rough lumber?

A. Of rough lumber. That is what you wanted, is it not?

Q. Yes—out of which the flooring is ultimately manufactured. Now, you say that after the various trimming processes the lumber goes to the grader. What are the grades of the rough lumber?

A. It is there graded into Clear—Do you mean the present grading?

Q. Yes.

A. Those grades have been changed, since I have been in it. The present grading is Clear, Select, No. 1, No. 2, and No. 3 common. [fol. 896] Q. Of what grades is the flooring manufactured?

A. The flooring is manufactured principally from No. 1, No. 2 common, and some No. 3 common.

Q. You have named the grades, in their order of quality?

A. Of their excellence, yes, sir.

Q. Now, name those again.

A. Clear; No. 1; No. 2, and No. 3 common—that is, No. 1 common, No. 2 common and No. 3 common.

Q. What is done with the better grades?

A. I omitted in that last—there is a Select in there now. I omitted that because when I was a lumber inspector there were not so many grades. The grade of "Select" was not in use at that time.

Q. It is in use now?

A. It is in use now, and has come into use since I quit the business.

Q. What is done with the grades that are not used for the manufacture of flooring?

A. The higher grades are sold in the rough, usually, by the saw-mills.

Q. What are the higher grades ultimately used for?

A. Various purposes; they are used by the furniture manufacturers, as chair stock, inside trim, somewhat and various purposes.

Q. Automobiles?

A. Automobile bodies, yes, sir.

Q. Now, what are those better grades that are used for those purposes, and are not used for the manufacture of flooring.

A. That would be Clear—that is, most of them use all of their Clear, ship all of their Clear in the rough, or nearly all of it; use a very little of the lower strata of the Clear but they cannot afford to put the Clear into flooring, because the Clear in the rough will sometimes sell for more than you can sell the flooring for after it has been manufactured, and you put in somewhere from \$12 to \$25 in the manufacturing process.

[fol. 897] Q. Now, what is done with those lower grades out of which flooring is manufactured, after it has been through those various sawing processes?

A. It is then taken some distance from the mill, to avoid fire hazard, and there it is piled, in cross piles, or what we call piling with stickers; usually we use dry stickers, to avoid sticker marks in the flooring lumber. It remains in these piles anywhere from nine months to eighteen months.

Q. Why?

A. So as to give it what is called the air drying process.

Q. Is that necessary to properly season the lumber?

A. Well, we all consider it so, after having given up some of these other ideas, which have been promulgated by certain kiln manufacturers—that they can take it direct from the saw and save us that process of handling it, in piling, from the sawmill, and from the long carrying charge, of anywhere from nine to eighteen months; but that has been tried out and has not proven satisfactory to the flooring manufacturers; hence, we all give it the air drying process.

Q. That air drying process is used, is it not, by the present members of the defendant association?

A. Yes, sir.

Q. Now, what is done after it has been given the air drying processes?

A. Then it is transferred to the dry kiln, the initial end of the dry kiln, where it is loaded on steel trucks, and wheeled into the dry kiln for the kiln drying process, which is the second drying.

Q. Mr. Newman thinks that you did not state how long the air drying process required. You did, did you not?

A. From nine to eighteen months.

Q. Now, describe the construction and the size, etc., of these dry [fol. 898] kilns.

A. They are usually constructed of concrete or brick, sometimes of steel and concrete structure, and occasionally of wood. They are built with tracks; and rails are about eight, eight or nine feet apart, on which these steel trucks run; and each kiln is about 18 feet wide, so as to nicely clear 16 foot lumber, which is the longest lumber we run in hard wood.

Q. The walls require considerable thickness, of those kilns, do they not?

A. Yes, they are usually a thick wall, so as to retain the heat.

Q. Describe the process by which the lumber is treated in the kiln. What is done with it?

A. As I said, it is piled, loosely piled on dry stickers, on these kiln trucks, which are about six feet long, and the pile would thus be about six feet wide and about eight or nine feet high. The kilns are heated by coils, steam coils, which receive their steam from the steam plant of the mill, and the coils extend, from the lower end of the kiln, they extend about a little over half way through the kiln, so that we have—

Q. The moist heat at the beginning?

A. Moist air, and not so hote, at the receiving end. It gradually received the more intense heat as it comes down into the kiln, at the end from which it is extracted.

Q. Why is it necessary to have considerable humidity in the first part of it, and a lesser degree of humidity in the—

A. In the discharging end?

Q. In the discharging end.

A. To prevent what we call case hardening. If you submit it to intense heat at once the lumber shuts up, like a clam, as we sometimes say, and it will not receive any heat; and this is what we call case hardening; the interior of that board will still be as moist, and [fol. 899] retain as much moisture as it had when it went into the kiln.

Q. At the discharging end state whether or not the humidity is reduced there, and there is a dry heat there?

A. It is a drier heat but a more intense heat.

Q. A more intense heat?

A. Up to one hundred and eighty degrees.

Q. State whether or not the air at different times is tested, in order to keep it proper at both ends.

A. Yes, sir; we test the conditions frequently.

Q. How long does the kiln dry process take?

A. From six to seven days.

Q. How many times a day is the rough lumber admitted into the kiln?

A. Only once a day.

Q. How many times a day is the rough lumber taken out of the kiln?

A. Discharged once a day, too.

Q. How many square feet of kiln is required to a machine, or what is the proportion? Do you get what I mean? The space needed for a kiln, for one machine?

A. For one machine, running about from seven to eight thousand, it requires a kiln about a hundred feet long, which will receive fifteen or sixteen of these trucks nicely, truckloads of lumber, about six feet wide and eight feet high.

Mr. Thompson: What machine?

Mr. Darby: The flooring machine.

Q. One flooring machine now requires a kiln space of about how much?

A. About a hundred feet long.

Q. About a hundred feet long and about eighteen feet wide?

A. About eighteen feet wide, yes, sir.

Q. What is the average number of machines operated by a member [fol. 900] of the defendant association, at this time?

A. That varies greatly. They run from one machine up to fourteen of fifteen or sixteen machines; sometimes they are not running all their machines at any one time; hardly any of those with the large number run all of them at the same time.

Q. Now, after it comes out of the dry kiln, what is done then?

A. It remains in the cooling room.

Q. What is the purpose of that?

A. For cooling the lumber so that we will not run it while it is hot.

Q. What is the disadvantage, if any, of running it while it is hot?

A. Well, it would still be a little spongy, a little on the spongy order, and you would not get as fine a face on it, as good a face on it.

Q. You want to reduce the temperature of the lumber to the temperature—

A. Of the mill.

Q. Of the mill?

A. Yes, sir.

Q. While it is being processed?

A. Yes.

Q. Now, what is done then?

A. It next goes to the rip saws which rip it into suitable widths for the flooring. These widths are various.

Q. What are the principal widths manufactured ordinarily by you?

A. Inch and a half, two, two and a quarter, and three and a quarter.

Q. Those are the principal standard widths?

A. The principal standard widths, yes.

Q. What is done next?

A. Next it goes, after it is ripped into these strips, it goes, in some mills, to a double surfacer, which surfaces it on both sides. But in most of the mills, especially the modern ones, we have the flooring machines which accomplish all of the work on the strip, that is it surfaces, hollow-backs, tongue and groove, and, where we bore, it [fol. 901] also bores.

Q. How about end matching?

A. End matching is a subsequent process.

Q. Oh, yes. Now, what do you mean by surfacing it?

A. That is, taking the rough off of it and making it smooth, both sides, as it is shown by all finished flooring,—putting a face on one side, and a hollow-backing on the other. There is a hollow trimmer, that trims off the rough surface.

Q. What do you mean by hollow back?

A. Cuts out a little hollow in the back, so that it will lie level on

the sub-floor, and creates an air space under the floor, and makes it less shipping weight.

Q. What other advantage, if any, does the hollow-back have?

A. I think there are no other advantages than those that I have mentioned.

Q. Does it not as a matter of fact tend to reduce the possibilities of rot?

A. That is what I mean by air space under there.

Q. That is one of the objects of the air space?

A. Oh, yes.

Q. Now, describe that fully, will you.

A. The air circulating under there prevents the accumulation of dead air and moisture. We have what we call a moist rot and we have a dry rot. A dry rot will be set up where the air is extracted from a given space. A dry rot will set up if you create a vacuum in this room, and continue that vacuum, in course of time, this wood-work would all dry-rot.

Q. And the flooring manufactured by the member of the defendant association is all hollow-backed, as I understand it?

A. Yes. No.

Q. What is not?

A. The Wisconsin Land & Lumber Company does not hollow-back.

[fol. 902] Q. It does not? You do not know whether the Wisconsin Land & Lumber Company is a member of the defendant association at this time or not?

A. No. I know that I have inspected their mills.

Q. Yes.

A. Up to the twelfth trip.

Q. All of the rest of these do manufacture hollow-back flooring?

A. I think so. Yes, I believe so.

Q. You say that the more recent machines surface it on both sides and tongue and groove it?

A. And hollow-back it.

Q. And hollow-back it?

A. In the same process.

Q. The same process?

A. With the machine.

Q. Tongue and groove. Describe what you mean by that?

A. For matching the flooring a tongue is made on the one side and a corresponding groove on the other, and when the matching process obtains this tongue fits properly into the groove.

Q. What must be done by those manufacturers who have not the modern machines? What do they do? Run it through different machines?

A. All the machines, since I have been connected with the industry, have surfaced on both sides, that is, the machines have been in use that would do that, although the lighter machines that were manufactured some twenty or twenty-five years ago were pretty light to do the whole job of surfacing both sides, tonguing and grooving, and so sometimes we put in a double surfacer to relieve this machine

of its heavy duties, and thus it would better do the more delicate work of putting a good surface on the face side and a correct tongue and groove. We lay a good deal of stress on a correct tonuging and grooving, so that the matching will be perfect.

Q. And then what is done with the product?

A. In some cases from the machine it goes to the trim saws, which [fol. 903] trim out the defects, and from that is goes to an automatic end matcher, which puts the end match on each board.

Q. The end matching consists of a groove or a tongue?

A. Yes, sir.

Q. So that the ends of the flooring can be matched, as well as the sides?

A. Yes, sir.

Q. Then what is done with it?

A. Then it goes to the grader, in that case. Now, there is another process, which is a more recent process—from the machine or matcher, it goes to a machine which does both the end matching and the trimming, trimming out of defects and end matching is the same process—so that one of these other processes, the older style, has been eliminated.

Q. Now, what is next done with it?

A. Next it goes to the grader.

Q. To the grader?

A. Who grades it in the proper grades, of Clear No. 1, and Factory, as he interprets it, and he throws it either on the trucks that are designated for those grades *of* into pockets, and from there it goes to the tying racks, where it is tied in bundles.

Q. How many pieces of it are included in a bundle?

A. From six to twelve. Some are using only six pieces in a bundle, more of them eight, and quite a good many ten, and some twelve pieces in a bundle.

Q. Is there any difference in the number of pieces, in a bundle between the different grades?

A. No, they have the same number.

Q. You say it is tied. With what is it tied?

A. It is tied with binder twine by a good many of the operators. Others use wire binders.

Q. A wire binder? In case a wire binder is used they also use a piece of metal band at right angles, so as to protect the edging of the [fol. 904] flooring, do they not?

A. Some of them do; that is a patented process, and is used by some of the members; and others use the wire just as they do a string, they have a machine that pulls the wire—the flooring is pulled back out.

Q. So that the wire will not cut the upper surface?

A. So that the wire will not mar the appearance of the floor, or the face side of the board.

Q. Those who do not use wire use what?

A. Those who do not use that clamp patent, the one you speak of, use the wire only, and they have a machine that draws it up tightly.

Q. And other persons use what, you say?

A. Binder twine.

Q. Then what is done with it after it is tied?

A. Then it goes to the warehouse, and is piled by grades and sizes.

A. That warehouse is under cover, is covered, is it not?

A. Always connected with the factory. The stuff is not allowed out from under cover after it is received at the receiving end of the kiln.

Q. And of course the warehouse has a floor; it does not rest on the ground, does it?

A. Oh, no; it is kept up off the ground well, with plenty of air space underneath all the time, air circulation. And then the cars for shipping we run into the warehouse, and load them in the warehouse, so that it is never out in the air.

Q. You do not load out in the open?

A. Do not load out in the open. There is only one exception to that in the Association.

Q. Now going back to 1914; at that time would the flooring manufactured by one manufacturer match with the flooring manufactured by another?

[fol. 905] A. In very few cases it would.

Q. For instance, in a building, a large commercial building, like the Illinois Merchants Bank, being constructed in Chicago, which requires some eight hundred thousand feet of flooring, how could they use flooring from different manufacturers, say, in 1914?

A. Well, it would be somewhat embarrassing to undertake to do it, except by carefully separating manufacturers' shipments and not allowing them to be intermingled in the unloading, and then using one on each floor or each set of floors, as it would cover.

Q. How about the flooring that is manufactured by the members of the defendant association today?

A. They have a uniform template now.

Q. And what does that result in?

A. That results in uniform matching.

Q. So that the flooring of one manufacturer can be used with the flooring of another?

A. Yes, sir.

Q. What is the function of the template? What is the template?

A. It is a steel pattern, just like that piece of flooring we had here, except that it is steel and is not susceptible to any change or wear—a heavy piece of steel. We have those made for each mill, so that there will be uniformity.

Q. Do you consider the matching of the flooring of one manufacturer with the flooring manufactured by another of benefit to the buyer?

A. It is a great benefit to the buyer.

Q. In what way?

A. Well, in such buildings as we were just describing, it might be very difficult for him to get from any one manufacturer or maybe from any two manufacturers a sufficient quantity of flooring to floor that building, and he would necessarily be at the disadvantage

of having to constantly guard against getting that flooring mixed in the handling of it. And then the retailer, he stocks the product; [fol. 906] he puts in a carload of a given manufacturer; and perhaps the next time he wants a carload of that same grade, and his manufacturer cannot supply him, and he has to buy from another. Now, he must necessarily keep them apart in this warehouse, or else great confusion will arise. So he is very much gratified—all over this country you will hear expressions about it, "You have accomplished a great thing in the uniformity of your matching."

Q. It gives the buyer a greater independence of any one manufacturer, too, does it not?

A. Yes, indeed it does.

Q. He is not at the mercy of any one manufacturer, he can select from another, where before he was more or less required to buy of one, was he not, after having bought?

A. After having started, yes, sir.

Q. You spoke a while ago of your having done that representative work for these various associations. What has been the nature of that work?

A. Would you want me to describe a little of the introduction of it, or just what I am doing now?

Q. What you have done. In a general way, what does that work consist of?

A. It consists of interviewing all classes, practically, of the users of the product, maple beech and birch flooring.

Q. Who are these persons?

A. First, the architect, and the principal. He is the man who initiates and specifies on, especially all the larger class of work.

Q. Who else?

A. There is the wholesale and retail dealer. School boards. Bank directors, who are building these large propositions. Trustees of colleges. The Municipal, State and Federal authorities, having in hand the building of large propositions. And corporations who themselves are interested. And we frequently interview them.

[fol. 907] Q. Such work has taken you from time to time over the entire United States, has it not?

A. Yes, sir, all the States in the Union except two.

Q. What two are those?

A. Nevada and Vermont. They have no large cities. I visit only the large cities, and they have no large cities; hence I have not gone into those two states.

Q. I wish you would state what is the Clear grade of flooring generally used for, the Clear grade of maple, beech or birch?

A. In maple, it is used in good homes, primarily, and good apartments, office buildings, and considerably, especially in the latter years, in high class school work; and in colleges and dormitory work, in the college buildings; and it is used quite largely by the textile industry, in the industrial buildings of the South, and in New England, especially; the textile mills require a good grade of flooring, smooth, free from anything that will catch lint; it must be free from all those defects that will catch the lint.

Q. You mean roughness, or splinters, or defects of any kind?

A. Yes, sir.

Q. You spoke of maple. How about clear beech or birch?

A. We recommend our clear beech and birch principally for high class work, such as we have described, excepting in the industrial buildings we do not use it so much, in the industrial, where service as well as appearance is required. It is almost equally hard, especially beech, but it is not used so much. We are using it in schools, and all these other classes of building; and then we use it especially where the architect desires to carry a color scheme; it is very susceptible of representation; you can make a beech and birch a very good substitute for mahogany or walnut or cherry or any of the higher class goods; and it takes an expert to detect the representation; it is very susceptible to stain, and to a high finish. It is used in bathrooms, and all that, for enamel work. There is a great deal of enamel work done, and they carry a color scheme with [fol. 908] that enamel work, to relieve the monotony of the building.

Q. The interior?

A. The interior finish, yes; and our birch and beech work goes well with that.

Q. But for flooring of the clear grade it must be free from stain, must be uniform in color and the appearance must be good?

A. How is that?

Q. The Clear flooring, the Clear grade of flooring.

Mr. Newman: Of what kind?

Mr. Darby: Of maple, beech or birch—must look well.

A. Yes, sir.

Q. And have no streaks?

A. The appearance. The appearance if one of the characteristics of it.

Q. Now, what is the No. 1 grade of flooring used for?

A. That is used for the same purposes, in a cheaper class of buildings; and we use it a great deal in school buildings.

Q. And that permits somewhat of discolorations and spots, etc.?

A. We have stores. Take the large department stores; and then grading them down, to the country stores. Used very much in store building. All commercial buildings, and all industrial and warehouse work, the better class of warehouses, use the No. 1 grade very extensively?

Q. Where they want something that is durable and serviceable, but do not care much about the appearance?

A. Not so much about the appearance.

Q. What is the factory grade used for mostly?

A. It is used in factory buildings, such as do not need or do not care so much for the smooth appearance, the smooth condition; and warehouses of all kinds, and all the industrial buildings, manufacturing shoes and clothing and all kinds of cutlery, and glass, and everything of that industrial description.

[fol. 909] Q. What is the chief characteristic or virtue of, we will say, maple as a flooring?

A. It is a very close fibred wood, close and compact, and interlaced, and knit so very tightly.

Q. It has great lasting qualities?

A. Yes, sir.

Q. In your trips about the country you have become familiar, have you not, with the flooring, whether natural or synthetic, that compete with maple, beech or birch flooring?

A. Yes, I come in contact with that.

Q. I wish you would name the competing floorings.

A. Do you mean in wood?

Q. In wood, and synthetic, too.

A. Well, in wood there is the oak, and the yellow pine, white pine, Norway pine, fir, Tamarack, cypress, gum, redwood, spruce, wood block; and they make even hemlock flooring.

Q. How about fir?

A. I named fir; fir is quite competitive.

Q. They use some walnut, and gum, too, in some parts of the country?

A. I named gum, and walnut.

Q. And some mahogany?

A. Yes. They are not very common, since there is not much of that timber left in the United States.

Q. What are some of the synthetic floorings that compete?

A. Cement, and tile, and slate, and soapstone, terrazza, asphalt, mastic, mastolith, gypsum, cork linoleum, and marble.

Q. What is the terrazza?

A. Terrazza is chipped marble, bound by a cement process. You will find this a great deal in corridors of hotels, and such uses.

Q. And commercial buildings?

A. And commercial buildings.

Q. Now, you have made at different times trips to the south or to the southern states, have you not?

[fol. 910] A. Yes, sir.

Q. In your field representative work?

A. My first work was done in the south.

Q. There is a great deal of oak flooring manufactured in the south, is there not?

A. Yes, sir.

Q. What would you say as to the magnitude of the oak industry in the south?

A. I noticed a report just yesterday, and I verified it today, that 60 per cent of all the oak flooring manufactured in the United States was manufactured within a radius of two hundred miles of Memphis, Tennessee.

Q. There are great numbers of flooring manufacturers in the States of Tennessee, Arkansas, Missouri and Mississippi?

A. Not so many in Mississippi, but many of them in the two Virginias.

Q. And in Arkansas and Tennessee?

A. Arkansas and Tennessee, yes, sir. And some in Kentucky.

Q. Now, state whether or not the machines that are used in the manufacture of oak flooring can also be used in the manufacture of maple, beech and birch flooring?

A. Oh, yes. They use the same equipment throughout.

Q. The same equipment as the equipment used by the—

A. Maple flooring manufacturer.

Q. Now, state what you found down there in Tennessee and the southern states generally with respect to competition down there between maple, beech or birch flooring manufactured by the members of the defendant association or some of the preceding associations with the flooring that was manufactured in the south, whether it was oak flooring or pine or beech or maple, or mahogany, etc.?

A. They are all competitive. We meet competition, sometimes from the oak manufacturers, sometimes from those who manufacture both oak, maple and beech—they have not much birch down there. And especially all through the south country the competition is very sharp on yellow pine. The rift-sawn yellow pine, the A-rift, especially, is a close competitor with our maple flooring, for the same purpose.

Q. You found that down there in your trip, you found that competition?

A. All through the south country.

Q. Then state whether or not maple flooring is manufactured in Tennessee and different places down there?

A. I beg pardon?

Q. State whether or not the maple flooring is manufactured down in Tennessee?

A. Yes, it is manufactured by any of these mills in Tennessee and the two Virginias, and in Arkansas some.

Q. In trying to popularize the products made by members of these various associations that preceded the present Association, did you find dealers down there who expressed a preference for the local product over the northern products?

A. The preference was in the matter of price, and by reason of their close proximity to the manufacturing points.

Q. How did the prices of the local product differ from the prices of the northern product?

A. Sometimes I had occasion, and the privilege of comparing it by seeing quotations. There is not much difference in the price at the mill; sometimes it is a little lower, but usually about the same prices that are made by the northern manufacturers; but the freight haul is very much less in that country to the points adjacent to the mills, of course, and that would make the cost less to the consumer.

Q. The southern manufacturer has an advantage over the northern manufacturer with respect to freight?

A. With respect to freight, yes.

Q. What did you find out about the price of the oak flooring as compared with the price of maple, we will say?

A. For many years the price of oak has oscillated between about five dollars and twenty-five dollars, on the Clear grade, we will say,

higher than maple; sometimes there is a wide difference. Oak varies, [fol. 912] has always varied, in my experience, more than the maple manufacturers. I do not know that I am able to estimate why that is true, excepting it is possibly the reason that they get stocked up heavily, and they must unload, and then they sometimes come down to within five dollars of the price of the maple product; and I have know it \$25 above.

Q. What do you mean? Five dollars and twenty-five dollars above—

A. Per thousand feet.

Q. You visited wholesale and retail lumber dealers down there, too, did you not?

A. Yes, sir.

Q. What did you find with respect to the stock they carried? Did they all carry stocks of flooring manufactured by the members of the various associations for which you have worked, or did they carry stock that was manufactured by others?

A. Oh, it varied. Some of them carry stocks of the northern manufacturers; some prefer the northern product, and do not choose to carry any other. Others prefer the local product and do not choose to carry any other. And some give their customer the preference of whichever he may choose.

Q. Did you during the course of your work learn that wholesales or retailers down there were carrying northern maple, beech or birch flooring which had not been manufactured by members of these various associations?

A. Oh, yes, frequently.

Q. State whether or not there existed competition between the flooring manufactured by northern firms who were not members of any of these associations for whom you have worked and flooring manufactured by members of some of these associations?

A. Yes, we find competition in this line.

Q. You found some dealers down there expressing a preference for some manufacturer's flooring who was not a member of any of these associations?

A. Oh, yes.

[fol. 913] Q. And others expressed a preference for the flooring manufactured by some member of these associations?

A. Yes, sir.

Q. Did you talk to any of the architects or dealers down there with respect to the standardized features, the standardized product of which you have spoken?

A. I always do that wherever I go. I recommend our product on the ground of its having been standardized, and thus the assurance and insurance.

Q. Did you meet any persons there who expressed an opinion as to the value or lack of value of such standardization?

A. Yes, I have had them question the value of that, on the subject of price only.

Q. What was said?

A. They would ask me what value the standardization feature would be to them, when the quotations were so widely apart, from different members of the Association. We adhere to no standard on price.

Q. And what did you say to that?

A. I always say to that that we have no standard on price, that our Association members are at liberty to quote as they choose.

Q. That merely the product was standardized?

A. The product was standardized and not the price. In fact, I do not keep in touch with the price question.

Q. What did they say with respect to the value of having the stock standardized, after they had once used it?

A. I never heard any criticism about it; in fact I have had very many compliments on it.

Q. What have some of the people said? What did they say to you with respect to it?

A. That it resulted in satisfactory results, or satisfactory dealings—satisfactory results were obtained—in that they had a uniform grade, and they could depend on the uniformity of that grade [fol. 914] coming the next time when they ordered, and they could thus have as uniform product at all times to recommend to their customers.

Q. What about mitigating disputes and litigations, etc.?

A. Yes, that has always been.

Q. Now, you made trips, also, in the New England States, and New York, and the Eastern states generally, did you not?

A. Yes, sir.

Q. What did you find, what competition between the flooring manufactured by the member of some of these Associations and other flooring in the New England States?

A. In the New England States we have the Vermont and New Hampshire maple, and quite a good deal in Maine, but especially in Vermont we have large forests of maple and birch.

Q. You say "we." You mean that they exist there.

A. I mean they exist there. I should not say "we."

Q. And there is considerable flooring manufactured in the New England states, is there not?

A. Yes. It is not standardized, neither is it graded, according to our grading rule. They manufacture it in long lengths, but do not grade it in accordance with our grading rules, at all, on most of it.

Q. What are the differences between the Eastern grading and the grading of the present defendant Association?

A. There are defects allowed in their stock which are not allowed in our grading; and they will leave the boards as they come from the matcher, long, with the defects in. We trim them out, and make the grade, make the grade all Clear, No. 1 and Factory. Maybe there is a defect down there, pretty close to the end of the board; we will throw that end of the board into Factory. And they leave that the whole length, and call it a log run; it is just as it comes from the log, or lumber.

Q. What do you say, if there is a defect in it? What defect do you mean?

[fol. 915] A. Knots, shakes, splits, hard, or anything—such defects as have been mentioned before in my testimony.

Q. What other manufacturers sell in the New England States, maple, beech or birch flooring?

A. Well, we have the manufacturers of all our northern states, where maple, beech and birch is manufactured, and, of Pennsylvania, and of the Adirondacks.

Q. How about the Canadian?

A. Canadian comes in, too. All the northern states.

Q. State whether or not the Canadian manufacturers sell maple, beech and birch flooring not only in New England but in most of the border states?

A. We find it coming in from Canada.

Q. With perhaps the competition somewhat stronger in the New England States?

A. Well—

Q. With perhaps more sale in the New England States than in others, or, what would you say?

A. The buyers are a little partial to the States at the same price and the same quality.

Q. They are?

A. Yes, sir.

Q. Considerable Canadian flooring is sold in New England, is there, however?

A. Yes, if they make the price, that catches many of the customers.

Q. Now, do you remember a visit that you made to Rochester, New York, in October, 1919? Do you remember it, or not? It does not make any difference to me, whether you do.

A. If I had something to refresh my recollection. I presume there is correspondence in the office, if I was there at that time.

Q. Do you remember any talks you had with some dealers in Rochester, New York, some retail lumber dealers, who spoke about putting in machines there?

A. Oh, yes.

[fol. 916] Q. State what that conversation was.

A. A number of them had planing mills, in which they dressed stock for local trade, and they were putting in a flooring from one or two of the flooring machines, and they were buying products from Pennsylvania, that they were going to run their own flooring, for their local trade.

Q. That is, Pennsylvania maple lumber?

A. Maple and beech.

Q. And they were going to manufacture flooring?

A. Yes, sir.

Q. How many feet will one machine produce in a day on the average?

A. It depends on the speed with which you run it. I have found

it to the best advantage, producing the best results and getting the best quality, most of the machines, running at from 65 to 80 feet a minute, lineal feet a minute. But the American No. 229, which is now very extensively used, will run up to 115 lineal feet a minute, and do good work; but it is very difficult for the help behind the machine to take care of the product properly, and do it economically. So I recommend the machines always to be cut down to not exceeding 90 to 92; and I prefer to have them at 80 to 82 lineal feet a minute—where I find the best results, from the average run of lumber.

Q. And about how many feet will the average machine run?

A. If they are running 115, they will go through, 10 to ten and a half thousand a day to ten hours each, but usually we run from seven to eight.

Q. Seven to eight thousand feet a day?

A. Yes, sir.

Q. How about competition in other kinds of flooring, between the maple, beech and birch flooring and other flooring, in the East? Do you remember one trip you made to Boston?

A. They are substituting, those who formerly used maple, especially, in the large commercial buildings, I found last fall, just about a year ago, when I was in Boston, a very large number of commercial buildings being built, and they were substituting cork linoleum; [fol. 917] they put in a sub-floor of concrete, and over this they run the cork linoleum, and they have pretty nearly a noiseless floor, and they claim a fireproof structure, and thus they have made great inroads upon the maple product.

Q. They have carried on a considerable advertising campaign there, have they not?

A. Yes, they were spending large amounts of money in the advertising of their product.

Q. And what you have done in these various trips throughout the United States is to popularize, so far as you can, the maple, beech and birch, the flooring manufactured by members of these different Associations?

A. Yes, sir. I do not criticise other materials; I enter into no discussion as to their popularity. I try to show that for specific purposes, and very many of these specific purposes we have them, which I can very easily demonstrate—then many of the substitutes.

Q. State whether or not throughout the United States competition existed between the products manufactured by the members of these various associations and the local woods which we have mentioned, as well as synthetic flooring, generally?

A. Keen competition ever since I have been on the road.

Q. They were pushing their respective products, and you were pushing yours?

A. Yes, sir.

Q. And you found that to exist, between the Northern manufacturers of maple, beech and birch flooring, who were not members of the Association, any of the Associations, and the different members of these various Associations?

A. Yes, sir.

Q. Out West fir is used considerably for flooring, is it not?

A. We begin to run very strongly onto the competitive flooring of the West when we come to Denver; from Denver on we [fol. 918] have to fight the fir, if we are to get in. It is a beautiful wood, a splendid wood, and it is diamond cut diamond out there.

Q. There is considerable fir in the West, is there not?

A. Oh, indeed, That is where it grows.

Q. And many flooring manufacturers?

A. Yes, sir.

Q. Of fir?

A. Yes, sir.

Q. And these same machines that manufacture fir flooring could be used for the manufacture of maple, beech or birch?

A. Oh, yes. They do use them.

Q. They do use them out there?

A. Yes, sir.

(Certain groups of papers were marked respectively as Defendants' Robertson Exhibits 20 to 31, inclusive, and shown to counsel for plaintiff, and then to the witness.)

Mr. Darby:

Q. I hand you documents marked respectively Defendants' Robertson Exhibits 20 to 31, both inclusive and ask you to state what they are.

A. These are copies of my reports, on visits to the various cities named, in years mentioned, which were 1917, 1919, 1922.

Q. Are the facts therein stated true, to the best of your knowledge and belief?

A. They are.

Q. And these reports were forwarded to Mr. Keehn at different times?

A. Yes, sir.

Q. And you understand, do you not, that they were bulletined out by Mr. Keehn to the various members of the then existing Association?

A. Yes, sir.

Q. You made many other trips besides the specific trips mentioned in these reports?

A. Yes, sir.

Q. These reports are typical of the reports habitually made by you?

A. Yes, sir, they are.

[fol. 919] Q. In the course of your field representative work?

A. Yes, sir.

Mr. Darby: The defendants offer the exhibits last mentioned in evidence.

Mr. Thompson: No objection.

Cross-examination.

By Mr. Thompson :

I have *down* work for the various Associations since 1914 and also prior to that date. Standardization was started in 1914. Prior to that I was one of the official inspectors of preceding Associations. From 1905 to 1912 I was connected with the East Jordan Lumber Company. Since 1914 I have done field representative work and reinspection work for the various Associations. I did my first field representative work in 1917. In connection with the standardization work, I became thoroughly familiar with all the operations at all the Association mills. Some of the members do not own standing timber and do not conduct logging operations nor manufacture rough lumber. Osgood & Blodgett Manufacturing Company, Holt Hardwood Company, Kerry & Hanson Flooring Company, Nichols & Cox Lumber Company, Strable Lumber & Salt Company, West Michigan Flooring Company and the North Branch Flooring Company do not own stumpage. All of them purchased their rough lumber on the open market.

Q. You have spoken about finding that the maple, beech and birch flooring manufactured by the Association members enters into competition with similar flooring, that is, flooring of the same woods manufactured in the south, and also in Pennsylvania and Vermont, I believe, and also some other Northern manufacturers. In the [fol. 920] course of your field investigative work have you been able to make any estimate as to what percentage of the maple, beech and birch flooring is manufactured by the Association members?

A. No, I have never made any calculation, myself, not being particularly interested in a precise report of that fact. I only know that there are a large number of the mills, and they are operating, and we come in competition with them.

Q. Well, without having made any tabulation that would tend to be accurate, can you give a general estimate from your general experience?

A. You mean as to their proportion of the whole or as to their proportion as compared to the Association members as mentioned in this list?

Q. Yes.

A. Or, do you mean capacity, or numbers?

Q. Well, general proportion of product manufactured and sold.

A. Of maple, beech and birch, I should roughly estimate that the non-members of the Maple Flooring Manufacturers Association might be somewhere from sixty to seventy per cent of the whole product manufactured of those three woods. There is a considerable amount of maple and beech in these localities—and considerable of birch in Maine, but not so much in Vermont, or New Hampshire, quite a large amount of it in the Adirondacks, not much in Pennsylvania, practically none of it in Arkansas, Tennessee, or the two

Virginias, where we get a good deal of maple, in the Appalachian Mountains, especially in the Blue Ridge.

[fol. 921] Q. Then, considering the territory, Michigan and Wisconsin, where most of the members of the Maple Flooring Manufacturers Association are located, what percentage of the maple, beech and birch flooring produced there is produced by the Association members?

A. Do you mean in the two states of Wisconsin and Michigan?

Q. Yes.

A. What percentage of the whole?

Q. Yes.

Mr. Darby: That is, produced in those two states alone?

Mr. Thompson: Yes.

A. I should say the non-members of these two states would produce somewhere about forty to forty-five per cent of all the production of the two states of Michigan and Wisconsin,—the non-members, I mean.

Q. Are the grading rules adopted by the Maple Flooring Manufacturers Association used by non-members?

A. If they can avail themselves of a copy of them they very much desire to use them; but the Associations from time to time have had them copyrighted, and have not distributed them promiscuously to non-members. However, they observe the same rules of grading, so far as they are able.

Q. The Associations' rules are supposed to be for the use of the Association members only, then?

A. Yes, sir.

Q. How is the lumber of the non-Association members graded, do you know?

A. Do you mean the lumber or the flooring?

Q. The flooring?

[fol. 922] A. It is graded quite largely according to these rules that I speak of, since they have the opportunity of employing graders who have been in the mills which have the Association grading and know pretty nearly how to grade flooring.

Q. Is the same designation of the grades generally used?

A. Yes, sir; but the interpretation may vary considerably, as I testified in my direct testimony. That was the intent of the standardization feature, so that some one who can see all of this and can get a birdseye view of all the mills, can keep it at the standard. And a graded may be on the table today, and he may take sick at noon and another one be put on this afternoon, who may not be so competent; there may not be so competent a man available, and he may differ very widely from the man who graded in the forenoon; and thus, if there is not some person who has a birdseye view of the entire process they are apt to diverge from the proper standard. That was the main intent of the standardization feature,—to get them in line, and then keep them there.

Q. I believe you testified that at the start of the standardization

work there were a few members of the Association who objected to it, and who did not allow you to inspect their mills?

A. After they had fully decided, and I had come out in the field and had begun the work, I think there was only one member who did not allow the inspection, on the first round, and they did not object strenuously, only that those chose to abide by their former regulations; and finally they asked me to come to their mill and inspect it, [fol. 923] within I think about two years—probably the third or fourth trip, but I do not recall.

Q. Then after the third or fourth trip the standardization work took in all of the Association members?

A. Yes, sir; all the mills were standardized, according to the standard established.

Q. And that has been the case continuously since then, has it?

A. From time to time, as I have made the trips we have inspected all the mills under the different Associations that have existed since 1914; I have not kept any track of the different Associations; Mr. Keehn has been secretary, and has called on me from time to time to make these trips of inspection. I have never been present at the winter meetings, when he states that these different organizations were instituted. I attend only the meetings when I am called by the secretary, on something pertaining to my feature of the work.

Q. Your work has been confined entirely to the standardization and the field investigative work, has it?

A. Since 1914.

Q. Since 1914?

A. Prior to 1912 I was an active employe of the East Jordan Lumber Company.

Q. Then since 1914 you have personally had no knowledge as to the prices charged by any of the Association members?

A. I do not pay any attention to prices, except as they are discussed by those whom I meet in the field work. Sometimes they begin to discuss, begin a discussion of prices, and I keep away from them, for it would be an almost infinite mind which could remember prices, in [fol. 924] the various localities, and I make these cities today and maybe jump five hundred miles tomorrow, and I do not know the prices in this city and would not know it in the one tomorrow, I do not know what prices are prevailing; so I choose to keep away from them. Then I have to deal with all classes, from the architect, the contractor, the wholesaler, to the consumer. Now then, the wholesaler must have something for his services, and the retailer must have something for his, and the architect must have something for his services; and it would not do to make one price in Omaha to the architect, and the jobber and the retailer and the consumer; they each must fix their own prices. So I keep away from the price question entirely, except to assure them that our members have that entirely in their own control. My business is to discuss the product as a fit product for this or that. If they are not fully posted as to what they should put into a building, I try to acquaint myself with what would be the best to use for that building. For instance, an architect may

not be very familiar with beech, and he has heard about it; he inquires, and I am supposed to enlighten him as to what beech will do in a certain use. For instance, in an industrial building, or in a commercial building, or in a school building, or in a college or in a church, or in a home, or what kind of a home they are going to build, what kind of flooring should I use? These are matters that are interesting to the architect, and I am there. And then I am sure to get information as to what is going on in that city, and our members can acquaint themselves then and be apprised of what is going on in that [fol. 925] city, what is going to be built—there is going to be a commercial building, or so many commercial buildings built, or there are going to be so many industrial buildings; they will take one class; the homes will take another; the apartments may take much of the product, this year. There may be a great many college buildings going up in certain localities. The Federal government may be active; the state may be active; the city may be active, in a certain year, and in another they may be inactive. Now, it will not be necessary to canvass those cities by members of our Association, if there is nothing doing in that city. I get this for a year ahead, and I tabulate that, and you can see by my remark that that is what goes to them. They can thus economically manufacture their product.

[fol. 926] DEPOSITION OF LESTER N. GODFREY, TAKEN, PURSUANT TO STIPULATION, AT BOSTON, MASSACHUSETTS, ON NOVEMBER 8, 1923

LESTER N. GODFREY, being duly sworn, testified as follows:

Direct examination.

By Mr. Johnston:

I live in Brookline, Massachusetts. I am the Treasurer of the Godfrey Lumber Company and have been engaged in the wholesale lumber business in Boston for 43 years. We deal in all kinds of lumber except mahogany. We handle hardwood floorings quite extensively. We deal in maple, beech and birch flooring, and oak flooring, and have been selling them wholesale for a great many years, I should say about 30. I don't know just how many feet of maple flooring we handle a year, but I know it is more than anyone else in Boston. We handle considerable quantities of beech and birch flooring, but much less beech than birch. We handle more maple than we do birch. We handle much more than a million feet of maple flooring a year.

For many years I did the buying, but have not done so for the past three or four years. Previous to that time I sent out inquiries for prices. Whenever we have a large contract for maple, beech or birch flooring, we send out an inquiry addressed to various manufacturers in Michigan and Wisconsin in order to obtain prices and to buy the flooring as cheaply as possible. We did not buy exclu-

sively from any one mill, but bought from whoever made us the best price. To whom we would address an inquiry depended upon [fol. 927] the flooring that we wanted and our knowledge of what the mills usually could supply. We received from time to time from the various manufacturers of maple, beech and birch flooring, lists showing the stocks of the various grades and sizes of flooring then on hand. These stock lists give us some idea of to whom inquiries should be addressed. For instance, if my lists here show that a manufacturer is out of a particular grade and size which we want, naturally we don't send an inquiry to him; on the other hand, if we find a party is overstocked or is accumulating a certain kind of flooring of the grade we want, we address the inquiry to him, thinking we will get a lower price. It has been our experience that we frequently get a lower price from the manufacturer who is overstocked or has accumulated the kind of flooring we want.

Q. Now, in the many years that you have been engaged in the purchase of maple, beech and birch flooring, has there ever been a time in your experience when all of the manufacturers of that flooring, or at least all with whom you come in contact as a purchaser, were quoting uniform prices for their product?

A. I cannot remember such a thing, no.

There has always been competition among the manufacturers of maple, beech and birch flooring in the sale of flooring to large dealers such as my company. That competition has expressed itself in varying prices quoted by the manufacturers on the same grade and size of flooring. That condition has always existed as far as I remember. It certainly has existed during the last ten years.

[fol. 928] I gave you such inquiries as I was able to find that were sent out by my company to the flooring manufacturers during the year 1922 and the replies that were received in response thereto. The documents you show me are copies of letters and the letters that I received in answer thereto that I sent out dated January 6, 1922, addressed to William Horner, Cummer-Diggins Company and the Kerry Hanson Flooring Company.

(Said documents marked Defendants' Godfrey Exhibit 1, and received in evidence.)

In my letter of January 6, 1922, addressed to the manufacturers above mentioned, I asked for quotations on 13/16 x 2 1/4" Clear Maple flooring. The quotations that I received were as follows:

William Horner	\$98.50
Cummer Diggins	99.50
Kerry-Hanson	94.50

All the prices above mentioned were f. o. b. cars Boston and were subject to the usual commission.

While I have not had direct charge of the buying during the last few years, I go through all the correspondence every day. I haven't had a vacation for years and it is only a matter of convenience whether Mr. Fisher or either of my sons dictate an inquiry or have

the stenographer send one out. I am the head of the business of our company and direct the affairs of it and devote all my time to the management of said company.

In the letter of William Horner dated January 9, 1922, which forms a part of Exhibit 1, it is said, "We do not see how we can possibly cut this figure, but if it will help you out any, we would be willing to go \$1.00 per thousand lower."

[fol. 929] It has been my experience frequently, in dealing with manufacturers, that they endeavor to give me a price which would enable me to meet competition and would cut their own prices accordingly below prices previously quoted by them. If the prices were uniform, or substantially uniform, for the same grades or sizes of maple flooring, we would not have to send out any inquiries at all.

In the telegram of Kerry & Hanson Lumber Company dated January 9th, they state, "Will make up to five dollars per thousand reduction. Do best you can on price." It is quite a frequent occurrence, where manufacturers endeavor to meet competition by giving us as low a price as they feel they can. In that particular case Kerry & Hanson practically left the price to us.

The letters you show me are copy of an inquiry that my Company sent out on February 11, 1922 and the answers that were received in response thereto. All these letters were received in the regular course of mail.

(Said documents marked Defendants' Godfrey Exhibit 2 and received in evidence.)

On 13/16 x 2 1/4" No. 1 Maple flooring, the following quotations were received:

William Horner	\$72.00
Kerry & Hanson Flooring Co.	74.50
Flanner-Steger Land & Lumber Co.	69.50

On 13/16 x 2 1/4" No. 1 Beech flooring, we received the following quotations:

William Horner	\$62.00
Kerry & Hanson Flooring Co.	64.50

[fol. 930] All the foregoing prices were per thousand feet f. o. b. cars Boston or New England delivery rate and subject to the same commission.

The documents you hand me are a copy of an inquiry our Company sent out on February 14, 1922 and the letters that were received in response thereto.

(Said letters marked Defendants' Godfrey Exhibit 3 and were received in evidence.)

On 13/16 x 2 1/4" Clear Maple flooring, we received the following quotations:

Flanner-Steger Land & Lumber Co.....	\$94.25
Cummer-Diggins Co.....	99.50
William Horner.....	98.00

On 1/16 x 2¼" Clear Beech flooring, we received the following quotations:

Cummer-Diggins	\$84.50
William Horner.....	80.00

On the 13/16 x 2¼" No. 1 Beech flooring, we received the following quotations:

Cummer-Diggins	\$64.50
William Horner.....	60.00

On 13/16 x 2¼" face No. 1 Maple flooring, we received the following quotations:

Cummer-Diggins	\$44.75
William Horner.....	43.00

All the prices above mentioned were on a delivered basis.

The Flanner-Steger Land & Lumber Company's prices were subject to a commission of \$3.00 per thousand and the prices quoted by the other manufacturers were subject to a commission of \$2.00 per thousand.

[fol. 931] In our letter to Cummer-Diggins Company, which is a part of Defendants' Godfrey Exhibit No. 3, we state: "Beg to advise that our customer had a price of \$80.00 on 13/16 x 2¼ inch clear beech and \$94.25 on 13/16 x 2¼ clear maple. Therefore we were not in it." That represents a typical case where some other wholesaler was able to quote a lower price than our Company was. Sometimes our competitors are able to underbid us and sometimes we underbid them. There are a good many wholesalers of maple, beech and birch flooring in this territory, and all of us are bidding for the business. The competition has at all times been vigorous and active and we send out inquiries in order to find out what we can buy the flooring at. We get the business sometimes because we are able to make a better price through getting the flooring cheaper than our competitors and *and* sometimes vice versa. Such conditions have always existed.

The documents you hand me are a copy of an inquiry our Company sent out dated March 30, 1922 and the letters that were received in response thereto.

(Said documents marked Defendants' Godfrey Exhibit No. 4 and received in evidence.)

On 1 1/16 x 2¼" face No. 1 Maple flooring, we received the following quotations:

Kerry & Hanson Flooring Co.....	\$84.50
Grand Rapids Trust Company, Receiver for William Horner	79.00

On 1 1/16 x 3 1/4" face No. 1 Maple flooring, we received the following quotations:

Kerry & Hanson.....	\$85.50
Grand Rapids Trust Company, Receiver for William Horner	80.00

[fol. 932] All the prices above mentioned were on the same freight basis and subject to the same commission.

The documents you hand me were received in response to an inquiry sent out by our Company on April 8, 1922.

(Said documents marked Defendants' Godfrey Exhibit 5 and received in evidence.)

On 13/16 x 3 1/2" jointed factory maple flooring, we received the following quotations:

William Horner.....	\$40.00
Strable Lumber & Salt Co.....	36.00

On 13/16 x 3 1/2" jointed No. 1 and better flooring, William Horner quoted \$77.00.

On 13/16 x 3 1/4" face No. 1 maple flooring, we received the following quotations:

William Horner.....	\$72.00
Strable Lumber & Salt Co.....	78.00

Strable Lumber & Salt Co. also quoted 13/16 x 3 1/2" No. 1 maple flooring at \$80.00. All flooring was bid delivered at the same place.

The Strable Lumber & Salt Company's commission was 5% and the commission of William Horner was \$2.00 per thousand. Some companies allow us a commission of 5% and others allow us a commission of \$2.00 per thousand. The commissions allowed by the different manufacturers vary.

The two documents you show me are letters received by our Company in response to an inquiry dated May 10, 1922.

(Said documents marked Defendants' Godfrey Exhibit 6 and received in evidence.)

On 13/16 x 3 1/4" face Clear Maple flooring, we received the following quotations:

[fol. 933] Flanner-Steger Land & Lumber Co.....	\$94.50
Cummer-Diggins Co.....	89.50

On 13/16 x 2 1/4" face Clear Maple flooring, we received the following quotations:

Flanner-Steger Land & Lumber Co.....	\$99.00
Cummer-Diggins Co.....	99.50

All quotations were on the same freight basis. I got an extra commission over that allowed anyone else from the Flanner-Steger

Land & Lumber Co. The Cummer-Diggins Company allowed the regular commission of \$2.00 per thousand. Flanner-Steger Company also allowed us to make the price. They very largely relied upon our judgment as to prices. We do not represent them exclusively in this territory, but buy wherever we can to the best advantage.

The documents you hand me are letters taken from our files and were received in response to our inquiry sent out during November, 1922.

(Said documents marked Defendants' Godfrey No. 7 and received in evidence.)

On 13/16 x 3½" jointed clear maple flooring, we received the following quotations:

Kerry & Hanson Flooring Co.....	\$95.00
Strable Salt & Lumber Co.....	91.75

On 13/16 x 3½" jointed maple flooring, we received the following quotations:

Kerry & Hanson	\$90.00
William Horner.....	82.00
Strable Lumber & Salt Co.....	86.75

On the 13/16 x 3¼" clear maple flooring, we received the following quotations:

Kerry & Hanson.....	\$89.50
William Horner.....	88.00
Strable Lumber & Salt Co.....	89.75

[fol. 934] On 13/16 x 3¼" face No. 1 maple flooring, we received the following quotations:

Kerry & Hanson	\$84.50
William Horner	79.00
Strable Lumber & Salt Co.	84.75

The quotations of William Horner and of Strable Lumber & Salt Company above mentioned were subject to \$2.00 per thousand commission and the quotations of the Kerry & Hanson Flooring Company were subject to a commission of \$3.00 per thousand. All of said quotations were f. o. b. cars Boston.

The documents you hand me were received in the ordinary course of business in response to an inquiry that we sent out dated December 13, 1922.

(Said documents marked Defendants' Godfrey Exhibit 8 and received in evidence.)

On 13/16 x 2¼" face No. 1 maple flooring, we received the following quotations:

William Horner	\$93.50
less \$2.00 commission.	
Kerry & Hanson Flooring Co.	93.50
less \$3.00 commission.	
Flanner-Steger Land & Lumber Co.	93.50
less a commission of 5%.	

On 13/16 x 2¼" face factory maple flooring, we received the following quotations:

William Horner	\$43.50
Kerry & Hanson	48.50
Flanner-Steger	46.50

On 13/16 x 3¼" face No. 1 maple flooring, we received the following quotations:

William Horner	\$78.00
Kerry Hanson	84.50

[fol. 935] On 13/16 x 3¼" face Factory Maple flooring, we received the following quotations:

William Horner	\$48.00
Kerry-Hanson	54.50

On 13/16 x 2¼" face clear birch flooring, we received the following quotations:

William Horner	\$95.00
Flanner-Steger	98.50

On 13/16 x 2½" face No. 1 Birch flooring, we received the following quotations:

Kerry-Hanson	\$83.50
Flanner-Steger	88.50

All the foregoing prices were f. o. b. cars at Boston. We prefer to buy our flooring delivered because if we did not buy it that way it would take up so much time in ascertaining railroad rates and finding out the waste of each kind of flooring and figuring out the cost. It would entail much costly clerical work and besides we might make mistakes. Our customers will not buy flooring any other way.

The variations between the prices quoted by different manufacturers upon the same size and grade of flooring as evidenced by the eight preceding exhibits are typical of the variations that have always existed between the prices quoted by the manufacturers of maple, beech and birch flooring as long as I have been familiar with the business. The variations fluctuate according to the conditions of supply and demand, but there has always been a difference between the prices which a number of manufacturers would quote on the same article.

[fol. 936] I am familiar to a certain extent with oak flooring and the prices on same. Oak flooring costs more than maple, beech or birch flooring, but making allowance for the higher cost on such flooring, I should say that the prices quoted by the manufacturers of maple, beech and birch flooring vary as much as the prices quoted by the manufacturers of oak flooring. Oak flooring is a new fad, and being high priced there is quite a little variation in prices. I should say that there is a greater variation of price on oak flooring than there is on maple flooring.

The documents you hand me are two letters received by my Company in the ordinary course of business and carbon copies of two letters that were sent out by my Company.

(Said documents marked Defendants' Godfrey Exhibit No. 9 and received in evidence.)

Q. Mr. Godfrey, I note in these letters which I have just shown you and which have been offered as Defendants' Exhibit 9 statements such as this: You say to the Kerry & Hanson Flooring Company, "For your information, beg to advise that we have been offered 3 1/4 inch Number One Maple Flooring by one of your association mills at Seventy Seven Dollars." To which Kerry and Hanson reply, "We note that some association mill has quoted you Seventy Seven Dollars, but we are receiving all the business we can take care of in this size and grade at Seventy Nine Dollars and Fifty Cents." Is that typical of the situation that you encounter from time to time?

A. That is typical of the situation from time to time, yes. Not always.

[fol. 937] Q. In other words, have you found, Mr. Godfrey, that the question of supply on hand of a given grade and size of flooring has been a most important factor in determining the price for which that manufacturer of that flooring would sell his flooring?

A. Yes. For instance, a man accumulates on certain grades and has had a big demand on other grades. He makes a concession to move that to make uniform his stock on hand. Cut it down to a proper basis.

Q. And that is occurring practically all the time with one manufacturer or another?

A. Frequently, yes, sir.

Q. And that enables you to buy from the manufacturer who is long a particular grade and size at a considerably cheaper price than other manufacturers will offer you the same grade and size for?

A. That is why we send out those inquiries. Otherwise we wouldn't have to send them out.

Q. If there wasn't that variance?

A. Yes. Otherwise we would simply have to quote a man and send it. If we didn't keep posted and write for these quotations we would be lost. We have competition herein buying—very strong. I think there are more lumber dealers than there are paving stones in Boston. I think we have added over one hundred and fifty in the last two years.

Q. Which makes for very sharp competition in the lumber field?

A. Very.

The standardization of the flooring manufactured by the members of the Maple Flooring Manufacturers Association is the most important feature in the business. It has been of great assistance to manufacturer, wholesaler, retailer, architect and consumer. Substantial variation in prices quoted upon the same *same* and size of [fol. 938] maple flooring, as evidenced by the exhibits, cannot be accounted for by the difference in quality of the flooring produced by the manufacturers. Since standardization has been put into effect, the price difference which would be allowed for the difference in quality between the different manufacturers would be relatively small. To the best of my knowledge and belief, all the manufacturers of maple, beech and birch flooring are trying to follow the Association gradage and rules. That is one of the great benefits of the Association.

We have never had occasion to ask for a reinspection.

Cross-examination.

By Mr. Benton:

As a general rule, we buy from Cummer-Diggins, William Horner and Kerry & Hanson, and very frequently from Flanner-Steger Land & Lumber Company, perhaps more frequently from them than the others.

Some of the manufacturers of maple flooring have exclusive representatives here and if they have we don't address inquiries to them. They give their representatives the benefit of their distribution and would not quote us. That is one of the reasons why we don't send out to more than five or six manufacturers at one time. It might be a material advantage to address inquiries to a larger number of manufacturers. Even among the small number to whom we address inquiries, there is a great variation in price. We send inquiries to about all we know about who make good flooring and manufacture in large enough quantities to supply our orders. We dicker with the different manufacturers as to commissions and prices in order to obtain as low a price as possible so that we may meet com-[fol. 939] petition. Of course, if a manufacturer gives us a larger commission, his profit would be less. The purpose of allowing a larger commission is to secure orders and the one allowing a larger commission may underbid the other fellow.

I could not state what the average variation in the various prices on a certain grade of maple flooring would be. My correspondence is accessible to either the plaintiff or the defendant. You will find quite a variation at different times. It is owing, a great deal, I imagine, to the amount of lumber they have on hand of certain grades. I don't know whether the difference in freight rates has a bearing upon the price of flooring. I don't know what effect standardization of flooring has had upon prices, but I do know that it has been of great assistance to us. We now have a more dependable grade.

I buy all our flooring outright.

(Redirect examination.

By Mr. Johnston:)

When a manufacturer of maple flooring has a special representative in this territory, I frequently make inquiry of the representative as to the prices of his principal. We often get oral quotations from them. For some reason or other these representatives make concessions to me. The different manufacturers from whom I buy do not know of the commission allowed by the other manufacturer. When we get an extra commission they don't want the other fellow to know it. They do not want to know each other's business in that respect. It is a secret between the shipper and ourselves and the commission varies, as we can show by our books and correspondence. The manufacturers are particular to ask us not to let anyone else [fol. 940] know the commission allowed us. The difference in prices varies all the way from \$2.00 to \$10.00 to the thousand.

Recross-examination.

By Mr. Benton:

Q. May I ask one question more. What in your opinion, Mr. Godfrey, is the reason for the manufacturers from whom you purchase maple flooring not wanting the other manufacturers to know their prices? Why is it a secret?

A. Well, if you were selling any other product other than that, for instance, and there was competition, if you conceded something off your regular price, whatever you may be asking, in order to secure that order which you particularly wanted, you wouldn't want your competitor to know about it.

Q. Do you know if he has secret agreements with the other wholesalers?

A. I never heard of it. So far as I know he doesn't have.

[fol. 941] DEPOSITION OF VERNON J. BERT, TAKEN, PURSUANT TO STIPULATION, AT CHICAGO, ILLINOIS, ON OCTOBER 23, 1923

VERNON J. BERT, being duly sworn, testified as follows:

Direct examination.

By Mr. Darby:

I am the Manager of the Drygoods Department of Sears, Roebuck & Company of Chicago. I have been associated with that Company for 20 years. I have been Manager of the Drygoods Department since 1914. From 1909 to 1914 I was buyer for that Department, and prior to that time was an employee of Sears, Roebuck & Company's New York office, buying general line of merchandise.

Sears, Roebuck & Company are a concern doing a general merchandise business by mail amounting to between two hundred and two hundred fifty million dollars a year, making them perhaps the largest mail order house in the country. We have branch stores at Philadelphia, Dallas and Seattle, with headquarters at Chicago. All initial buying of merchandise is done by the Chicago Managers. We handle a very complete line of merchandise. I do not know of any specific line of goods which we do not handle.

I am and have been engaged in buying all the lines known cotton piece goods and beddings. My experience on general merchandise is more or less limited. Cotton piece goods are the first state of textiles and form the principal raw material for manufacturers of wearing apparel and kindred goods. Beddings are a species of [fol. 942] drygoods and include such articles as bed spreads, sheets, pillow cases, mattress pads and covers. The textile industry, which is largely cotton piece goods,—almost entirely,—is probably the country's ranking industry. Cotton piece goods can be divided into several principal classes, such as grey cloth, gingham, percales, ducks, tickings, tobacco cloths and converted materials, meaning colored fabric made from grey goods.

These goods are distributed by two principal methods. The first method is for the manufacture or mill to sell its products entirely to the dealer. The second method is for the manufacturer to distribute his drygoods through a commission sales agent, who receives a fixed percentage for the sale of the goods and assumes the credit risks and all expenses connected with selling. The headquarters for these sales agents and also the sales offices of mills selling direct is in New York City, confined in a small area in the general neighborhood of Worth and Church Streets. Almost without exception every manufacturer is represented in that market.

To keep informed of the market conditions, a buyer should and does make three trips to New York City and interviews the sales agents. The information thus obtained is supplemented by printed lists that he receives from time to time. There is a type of selling done through brokers, who receive a recompense from the seller. Their profits, however, are confined entirely to that form of drygoods known as sheets and grey goods, meaning unfinished cloth as it comes from the loom. This type of merchandise is sold to converters, who send it to public finishers and convert it into finished merchandise by means of trimming, dyeing, mercerizing or bleaching. [fol. 943] Q. Now, I wish you would take up, for instance, either percales or gingham, and tell what if any variation in price there is among the different manufacturers, and so forth.

A. Percales are an outstanding important item in dry goods, being a fabric largely used for women's housewear. There are three principal manufacturers, and it is customary for them to manufacture a part of their cloth, having only limited facilities for weaving the amount of fabric they use. Their principal business is that of dyeing and printing the grey cloth, and putting it in shape for the garment manufacturer and the dealer, for distribution by the yard. It is cus-

tomary for these manufacturers to sell their product for fixed periods of delivery. It is my experience and observation that the three principal manufacturers rarely vary in price on their product. Percales are a very standard article. The product of the different manufacturers being identical, the only difference would be in the character of patterns or colors. Prices are made by them, it would seem, almost simultaneously. They print a price list, mailing it to all of their customers, the cash discount and dating being in all cases the same. Percales are considered a highly standardized article.

Q. Give, if you will, an illustration of the prices at some particular period which would be typical of the usual spread. How much a yard does that sell for usually, and what is the spread between prices? [fol. 944] A. The last price fixing period was in July, when prices were made on a basis of twelve and one half cents per yard, for the light ground patterns, or what is known as 64 by 60 construction of cloth. Terms were two per cent ten days, and sixty days extra, with deliveries at the option of the buyer, up to November 1, 1923, with the price guaranteed by the seller up to date of invoicing of the merchandise; the billing date and the delivery date, as laid down by the buyer, not necessarily being the same. This price, together with prices for other of their percale constructions, was printed in a circular and mailed to the trade. A circular by M. C. D. Borden & Sons, New York City, sales agents for the American Printing Company of Fall River, Massachusetts, Lawrence & Company of New York City, sales agents for the Pacific Mills of Lawrence, Massachusetts, Converse & Company, sales agents for the Windsor Print Works—location not known—were at one level, and the price lists all bore the same date. At the present time all of these sellers have withdrawn their goods from sale, and there is at the present no quotation to be had on percales.

Q. Were the prices usually identical, as in the instance you gave, or was there any spread, and if so, how much?

A. I stated before that it was my observation that percale prices were almost always uniform, comparing one manufacturer's prices with another.

Q. Percale is a standardized article, I believe you said, is it not?

[fol. 945] A. I stated also that percales were a highly standardized article, being made from a standard construction of grey cloth, and the only variation in different manufacturers' products being a matter of taste on the part of different buyers as to superiority of style of one manufacturer over another.

Q. How do you buyers generally regard the matter of standardization of a product? Do you consider it a convenience or an inconvenience, as a matter of safety or a matter of peril for you buyers?

A. My personal opinion—and I think it is that of most buyers of goods—is one of appreciation of standardization in any merchandise we may use. Uniformity of quality is an exceedingly difficult thing to accomplish in manufacturing—so that wherever we encounter it it is a measure of protection not only to the dealer but to the consumer as well. I might say at this point that these mills prefer to sell their goods under their own brand, though there are instances where they

will sell their merchandise to a dealer under the dealer's brand, or without brands, and so forth. The standardization of an article is a protection to the user of goods, and greatly simplifies the re-sale. As an example, in times of difficult merchandise conditions branded goods, because of being well known, are much more easily salable than the type that has no identification, meaning that it is unknown as to its quality.

Q. What is your opinion as to whether or not standardization [fol. 946] is a protection against fraud, and whether or not it is a benefit to both the honest buyer and the honest seller?

A. In my opinion a manufacturer who attempts standardization of his goods and puts thereon his brand, so that the consumer may know it is his goods, takes pride in maintaining a uniform quality, so that the consumer, once having used the article and finding it satisfactory and of good value, could secure more of it. Dealers of course follow the line of least resistance in the merchandising of goods. We all lean to those articles which we can sell most easily; and it is my experience that this we can most easily do when dealing with goods that, because of being sold under the manufacturer's brand, or at least sold on sample or description, of a reputable manufacturer, lends assurance that the merchandise will be fully up to sample and uniform over a period of time.

Q. How about standardization of the same article among different manufacturers? You spoke about the standardization of one article by one manufacturer. Suppose now that several manufacturers have a uniform or standard product—do you consider that an advantage or a disadvantage to the buyers and to the public generally? I believe you mentioned that percales were pretty largely standardized.

A. Standardization of goods really means the uniformity. Manufacturers will work up or down from a fixed standard. In the case of the percales described, standardization has brought uniformity of the products of the three mills described, so that the products of [fol. 947] one with another are interchangeable, which of course, is advantageous to the dealer in securing adequate supplies of goods, by being able to use the product of these mills interchangeably.

Q. Now, I wish you would take up and state what your experience has been in buying gingham, as to the quotations that you have received from manufacturers, and the spread, if any, and what your experience generally has been?

A. There is not the same degree of standardization in the manufacture of gingham as there is in percales. There is much more workmanship in the manufacture of gingham, ingenuity in styling, and variations in the finishing of the cloth, all of which would have a bearing on price. Gingham are generally sold with a price opening twice a year, spring and fall, and it is my observation that most of the gingham manufacturers prefer to allow the Amoskeag Manufacturing Company, of Manchester, New Hampshire, to set a price on its products before pricing their own. In the class of fabrics that this concern makes they are considered eminent, so that other manufacturers generally speaking sell their products at a slight

reduction from the Amoskeag prices. There is usually a difference in price of approximately one half cent per yard between the Amoskeag prices and that put on what would be called the nearest competing fabric. As an example, the Amoskeag Company, on its principal cloth, known as 19,000 Chambray, made a price in September of 17½ cents per yard; its chief competitor, the Riverside & Dan River Cotton Mills, of Danville, Virginia, quoted 17 cents on their [fol. 948] competing fabric, known as Security Chambray. Most of the buyers consider these two fabrics of parallel quality, conceding perhaps a shade advantage to Amoskeag because of superiority of finish. This little difference is, of course, emphasized by buyers, and is used as an argument against the Riverside mills, in their effort to secure the lowest price possible. It is my understanding that the gingham manufacturers, with perhaps one or two exceptions, are members of an open price association, the effect of which, according to my observation, has little bearing on quotations of gingham manufacturers. The Amoskeag Company, being so large a factor in the manufacture of gingham, makes the market price.

Q. You spoke about the chief competitor of the Amoskeag Company. How about other people who manufacture the same line of goods?

A. All other manufacturers of gingham are in very much smaller manufacturing units. Their methods of selling are the same as those of the Amoskeag Company, and here also it is my observation that they find it necessary to accept a lower price for their goods on parallel qualities. I might state here a peculiar condition, in this big cotton industry—that of the industry being first established in New England, and at one time manufacturing all the cotton piece goods that were manufactured in the United States, find a keen competition at the present time in the establishment of mills in the southern states, because of accessibility to their raw material, namely, [fol. 949] cotton, lower real estate values, and longer working hours, more lenient child labor laws, are enabled to produce parallel qualities of goods at a lower cost per yard than it is possible to do in New England. The industry being newer in the south has not, until recently, reached the state of perfection that exists in the New England mills. Buyers of goods have therefore had a distinct prejudice for the New England made article, and even now, when the efficiency of southern mills has brought their product to just as high a state of excellency, as the New England goods, they are still made to suffer by the prejudice which still exists in the preference of buyers for New England made merchandise.

Q. How about the spread of price among the lesser units you mentioned? Could you compare the price that you receive from one against the other, of the smaller manufacturers?

A. There is not the same standardization of gingham qualities as exists on percales. Hence price comparisons are more difficult to make. Uniformity of price only exists in ratio to the difference in qualities of goods of one manufacturer's make to another's.

Q. State, if you will, some of the disadvantages that a manu-

facturer incurs in selling his product to you buyers or to some buyers, or to the trade in general.

A. The product of cotton mills is largely sold to general manufacturing concerns, garment manufacturers, and to jobbers who resell the goods as piece goods. Generally speaking, purchases are made [fol. 950] by a salaried staff of men hired for their ability to buy closely. These buyers of course use every argument, in their negotiations with sales agents, to secure the lowest price possible on the goods they buy. The method used is that of pitting one manufacturer against another; and there are, no doubt, instances where the seller is at a disadvantage through unfairness on the part of some buyers, making misstatements as to quotations made by sellers, the object being to create the impression that similar merchandise can be bought for a lesser price.

Q. What, in your opinion, are the important factors that produce uniformity of price among manufacturers?

A. There cannot be uniformity of price unless there is a degree of uniformity of quality. Competition for business on the part of the seller is more accountable for a leveling of quotations than any other factor.

Q. In what way does that work?

A. As stated before, the mills sell directly or they sell through commission agents. A mill quoting its product above the average would not secure its share of the business. On the other hand, a mill selling below the average would perhaps find itself in a position of selling goods at a lesser profit, a situation it might have to explain to its stockholders. And, in the case of marketing the goods, through a commission agent, might seek a new agent if in their opinion that agent was not securing market prices for its goods.

Q. Do manufacturers keep in touch with what prices their competitors are getting, or how do they learn that? By what means?

[fol. 951] Mr. Thompson: I object to this, as incompetent, no foundation having been laid. He has testified that he is a buyer, and you are asking him questions of practices among manufacturers.

Mr. Darby: I will withdraw that question.

Q. Go into detail more fully as to why competition results in a leveling of prices.

A. Taking for illustration that character of cotton piece goods known as grey goods, this type of goods is sold to the trade almost entirely through professional brokers, who are in touch with selling agents for mills, almost hourly, and it is my observation that quotations made by these brokers at any given time show practically no variation. These brokers have a well defined place in the trade, and are considered a very necessary part of the business of distributing dry goods. Many of these brokers print a price list of standard construction, of sheetings and grey goods, and mail them to their clients weekly. A comparison of the prices quoted by different brokers at any one time would show practically no variation in quotations covering a range of a hundred or more qualities of goods. These quo-

tations could be considered a composite price ruling at any one time and covering some one particular construction of cloth.

Q. Do buyers as a rule prefer to buy in a stabilized market, or in a widely fluctuating market?

A. Personally—and I believe it would be the attitude of men engaged in buying goods as I do—there would be a distinct preference [fol. 952] for buying in a stabilized market, for the reason that stabilization of price eliminates to some extent the hazards of business. Hazards in business are necessarily costly, producing a higher rate of mortality,—business mortality—and it is my opinion that this results in a higher general cost of doing business, which in the end of course must be borne by the consumer. Cotton goods, generally speaking, are purchased in an advance way, meaning contracts are entered into for deferred deliveries. If prices are stable these forward contracts can be entered into with a greater degree of confidence on the part of the buyer,—which is a healthy situation, and enables the manufacturer to lay out his manufacturing program in an orderly manner, making for continuous runs of goods, which it would seem would make for lower costs, that should be reflected in the price.

Q. If a man offers you his merchandise at too much under the market, how do you regard that?

A. An offering of goods by a manufacturer at a price below the average level would raise a question in the buyer's mind as to whether the goods were as represented, and would also occasion question in his mind as to whether the deliveries of the merchandise would be executed as laid down in the contract of purchase. There have been instances, to my knowledge, where goods bought at a low level of price have not been delivered. Take, for instance, in a rising market, a mill having sold goods at a low price, and finding that it later on could sell that same merchandise for a higher price, could become delinquent in delivery and perhaps be relieved of the obligation [fol. 953] of delivering the merchandise, through cancellation. The rights of the buyer in contracts covering the purchase of dry goods are clearly defined, but these contracts also provide many reservations to excuse the manufacturer from delivery, such as strikes, lock-outs, acts of God, failure of water power. A manufacturer becoming delinquent in delivery could offer as an explanation that his power had been shut off, and it would be exceedingly difficult for the buyer to prove that this shut-off of power was or was not the real cause of the delinquent delivery.

Q. What has been your experience and observation with respect to quality, when you were quoted too much below what you consider the market should be or is?

A. A buyer being quoted a price much below the average level would have his curiosity immediately aroused as to the reason therefor; and unless the quotation came from a manufacturer of proven integrity he might expect adulteration in the manufacture of the goods in question. All cotton merchandise is not standard in construction; and a degree of adulteration would be possible, and escape

the cursory examination that cotton piece goods receive in general trade handling.

Q. As I understand it, then, you buyers prefer to buy at the average of the market, and in a stabilized market, rather than a widely fluctuating market?

A. The buyer of course always aims to buy at the lowest price possible. We covered, before, the question of a stabilized market; [fol. 954] we prefer it, as it reduces the hazards of our business.

Q. About how many manufacturers would you say there are in the United States that manufacture cotton goods? You have mentioned one or two of the leading ones. About how many are there?

A. There must be considerably over three thousand mills manufacturing cotton piece goods. That, however, is a matter of record that could be determined.

Q. Yes. Now, I wish, if you could, you would make it a little more specific, concerning the spread that would exist, if any, between the different manufacturers on identical or similar lines, giving some illustration.

A. A good example would be the matter of selling cotton duck. Ducks are made in a wide range of weights and widths; and for convenience for both the buyer and the seller manufacturers have adopted what is called a card list, fixing a price for each weight and width, at various levels of basic cost. Quotations are then made, with a discount from these list prices.

Q. Each manufacturer stating his own discount from the card list?

A. Yes, sir.

Q. Now, give some instances of what one manufacturer has quoted?

A. At the present time the general quotation on what is known as numbered duck is thirty-five per cent off the list. The spread of quotation, one manufacturer compared with another, is about two and one-half per cent, at the present time.

[fol. 955] Q. And what is the price on that particular product that you have just mentioned? What do you call it? Numbered duck? What is the list price? You say it is thirty-five per cent off. What is the list price per yard?

A. There are so many numbers and so many qualities, that I have not in my mind at the moment any particular one, as to what its price per yard is, on this card list.

Q. But you say general by 35 per cent off the list?

A. The list is being used by all manufacturers of this duck, and they are making their prices by means of a discount off of this list.

Q. And two and one-half per cent would cover the spread that exists between the high and low on that list?

A. At the present time there is only a variation of two and a half per cent between the highest and the lowest; and this could be explained by a little variation in the quality of the product; duck being made out of common cotton, one mill might use a little better grade that would perhaps cost a little more than the average used.

Q. And what would be the extent of the spread? Does the spread remain constant, or has it fluctuated in the past? Give some idea as to the spread at other times.

A. It is my observation that there is always some difference in the discount quoted by different duck manufacturers. I am unable to say now just what that spread is at different times.

[fol. 956] Q. Would it exceed four per cent, ever?

A. I have never known it to be that much.

Q. When do you find the periods of the greater spread or the lesser spread, ordinarily? I wish you would state that, please.

A. I would not say that that spread is any more or less at one time as compared with another.

Q. How about the difference, if any, between a rising market and a dead market, or good business and poor business?

A. No, I could not say anything more than what I have said there. The spread in discount is not at any time very much.

Q. Mr. Newman has suggested that perhaps your answers with respect to the spread have been confined to one article. Does that cover more than one?

A. I am speaking only of these ducks—going back to my statement that prices are arranged through a means of this card list, which carries a price for every weight and every width in the ramifications of that article.

Q. How many different weights and widths?

A. There is a card for what is known as numbered duck. There is a card for what is known as Army duck, and I think there is a card for what is known as belting and hose duck, each one of which is—each one of which is made specifically for a certain purpose.

Q. But each card will have many different weights and widths?

A. Has many different weights and many different widths.

[fol. 957] Q. And this spread you spoke of, would or would it not cover all those different weights and widths?

A. The discount would apply equally.

Q. To all of them?

A. To any grade, any weight or any width.

Q. Could you cover approximately now, as you have done with respect to the spread on the cotton, the spread that exists generally between the high and low, on all classes of merchandise that you buy? In other words, I want to get what would be the spread between the high and low generally on all the lines that you buy. Put a maximum, if you can.

A. We have experienced, since 1920, some very wide fluctuations in the cost of cotton goods, due to two reasons,—firstly, the very wide fluctuation in the principal raw material, namely, raw cotton; and, secondly, an unbalanced condition in distribution of cotton piece goods. We have had a period of slackness, followed by a period of feverish activity, and followed again then with a slack period. Cotton goods, taking specifically 64-60 print cloth, from which percales are made, have had a spread this year of from 8½ cents per yard to 10¾ cents. Speaking of spread, we mean that that is the trend of the average cost of that item this year. If by "spread" you

refer to quotations by competing manufacturers, the spread is practically nothing.

Q. How much a yard, between the different manufacturers, now?

A. At the present time there is a wide spread—manufacturers [fol. 958] maintaining that the present price of goods does not return them a fair profit, so that you find a situation where one manufacturer is asking as much as 10¼ cents for this construction today, and others willing to take 9¾.

Q. Do you consider that an unusually large spread?

A. A very large spread for that item.

Q. What is the usual spread ordinarily when conditions are more normal?

A. A difference of as little as ¼th of a cent a yard would be all that there would be in the quotations of competing manufacturers on that particular article.

Q. Do you consider, from your knowledge of conditions, that there is competition in that industry, and has been, among the different manufacturers?

A. The competition on this particular article is especially keen, and made more so by the activities of brokers, described before, through whom the most of that particular article is sold.

Q. I believe you said before that the prices there were uniform. I believe you mentioned that it was twelve and a half cents. How about periods before? Was there any spread between the different manufacturers, on percales?

A. We have had three price levels on percale this year, namely, 14½ cents, 15 cents, and 12½ cents per yard. At each level all manufacturers were quoting a uniform price.

Q. How about gingham, now?

[fol. 959] A. The price of gingham has not moved in the uniform manner that percales have.

Q. What is the spread of the present between the high and low of the different manufacturers?

A. The price on gingham has been better stabilized this year than on percales, due principally to the importance of the Amoskeag Company in the manufacture of gingham. They made a price during the first half of the year of 17½ cents for their 19,000 Chambray, which covered deliveries in the second half of the year. They recently made a price again for deliveries into the first half of 1924, continuing the 17½ cent price.

Q. And their nearest competitors at the different times were what—their principal competitor that you mentioned?

A. The nearest competing cloth, the Security Chambray, made by the Riverside mills, has on each occasion been a half a cent lower.

Q. Now, those two mills are more or less in a class by themselves, as I understand you?

A. In a class by themselves, as being very large in that particular field of manufacturing.

Q. And their goods being of very excellent quality and of good reputation?

A. Yes; their goods run very uniform; and both of these manufacturers are considered most reputable.

Q. Now, take the smaller fry—we will call them—and among themselves what was the spread, the extreme spread, between the quotations that you received from them, that is not comparing them with the two larger competitors, but comparing them one with another?

[fol. 960] A. I wish you would make that question over.

Q. You have compared the prices of the two leading manufacturers, and have stated what the spread was between the quotations or the prices made by them. Now take the smaller manufacturers, and compare the prices of one of the smaller manufacturers with the prices of another; what I wish to get at is the spread that existed between the prices made by these various small manufacturers, that are not of the size of the two leading ones that you have mentioned.

A. On parallel qualities, made by the smaller gingham manufacturers, I would say that their prices, made early this year for deliveries into the second half of the year, showed as an average very little differential, as compared with the Amoskeag price. At the present time, owing to over-production of ginghams, and the apparent inability of manufacturers to sell their full production, these smaller mills, who six months ago quoted a very slight differential in comparison with Amoskeag, are now quoting a much wider differential. For example, the Highland Park Mills, of Charlotte, North Carolina, have a gingham known as Spencer; their quotation was $16\frac{1}{2}$ cents per yard last spring, as compared with the Amoskeag at $17\frac{1}{2}$. With the Amoskeag price now still $17\frac{1}{2}$, the Spencer cloth is being quoted at 15 cents.

Q. How about in years of normal conditions?

A. In a period of normal conditions the differential in price of the smaller manufacturers, compared with the Amoskeag, would be approximately, in percentage, four per cent.

Q. Now, you mentioned that in periods of normal activity the [fol. 961] differential between the smaller manufacturers and the Amoskeag would be four per cent. There are several, as I understand your testimony, of the smaller manufacturers. What would be the differential among that group of smaller manufacturers, in ordinary times?

A. There is not the same degree of standardization among the smaller manufacturers, so that price comparisons are hard to make. Competition for business among them, however, does bring about, in the opinion of the buyer, a uniformity of quotations, taking into consideration the variations in quality.

Q. When you use the phrase "uniformity of quotations" what do you mean? How big a spread would there be? Do you mean an identity of price or a substantial identity, or what?

A. I mean that a quotation from one mill, say at 14 cents a yard, as compared with another's at $14\frac{1}{2}$, would be, by reason of the higher price article being somewhat superior to the cheaper cloth.

Q. But you cannot make any closer comparison, you say, on account of the difference in quality among the smaller manufacturers?

A. There is not the same standardization of quality among the smaller manufacturers.

Q. And you do not think you could make any closer comparison, because of that fact?

A. No, sir.

Mr. Darby:

Q. Do you know, from your experience in buying, the terms of discount, I mean the terms with respect to discount, and the terms of sale made by the different manufacturers engaged in that business [fol. 962] ness?

A. Naturally. Whether or not I buy a mill's goods, we either have a printed price or an oral quotation; and we find that manufacturers of any particular character of cloth are almost entirely uniform, not only as to the cash discount but lengths of dating as well; terms of two, ten, sixty extra are considered regular terms in the cotton piece goods business.

Q. Please interpret that "two ten extra," please.

A. Two per cent, cash discount, ten days, and sixty days extra dating.

Q. What does sixty days extra dating mean?

A. If the invoices are not paid within the seventy days the terms would revert to two per cent cash discount, and ten days' dating, with interest charged at 6 per cent per annum for time elapsed after the ten-day dating has expired.

Q. Up until paid, I suppose?

A. Until paid.

Q. Your testimony now has covered—as Mr. Newman suggests—percales, ginghams and ducks. How about bedding, etc., that you mentioned before, which you buy?

A. The principal item of bedding is bed spreads. There are four principal manufacturers, and about that many other smaller ones; and standardization does not exist in this group, for the reason that styling plays such a big part in the merchandising of this character of goods. The terms and discounts, however, are uniform with all manufacturers of bedspreads.

Q. What are those terms, please?

[fol. 963] A. Two per cent cash discount ten days, and sixty days extra.

Q. For the reason that the matter of taste and artistry in producing the product enter into the prices of the different manufacturers you, I assume, are unable to make comparisons as to prices among the different manufacturers?

A. We can make comparisons of prices of similar qualities.

Q. I wish you would do that, then, please.

A. The product of the Stevens Manufacturing Company, of Fall River, Massachusetts, ranges in price, for various qualities, from \$1.02½ to as high as \$9.00. The product of the Monument Mills,

of Housatonic, Massachusetts, starts at the same minimum price, but does not extend as high, for the reason that they do not make as high a quality as does this first manufacture. They do, however, have qualities which are to some extent comparable. It is my experience that these two mills very closely parallel each other's prices, on what appears to be an equal quality of article.

Q. Now, take up the different qualities, or give us some idea of how closely they approximate in price on qualities which are substantially the same.

A. Do I understand by that question that you want me to select a fairly comparable grade from both mills, and tell you the prices of them?

Q. Or the spread between them, or what is usual. Not what it is necessarily now, but what would ordinarily be the spread between them or differential.

A. To my best knowledge now the beginning number or quality [fol. 964] of satin weave bedspreads,—the comparison would be 2.30 for the Stevens goods, and 2.35 for the Monument goods; but what they call those particular qualities I do not at the moment know.

Q. Would that be typical of the spread that usually exists between them?

A. No, that is not typical. We found occasions when the Monument quality was lower than the Stevens.

Q. How much lower?

A. That, offhand, I could not answer.

Q. Could you tell what would represent the usual or average spread between them? Would five cents represent it or would it be six, seven, eight, ten, fifteen, two, three, one, or what?

A. My experience is that those two mills' prices very closely parallel each other, for what looks like a similar quality of goods.

Q. And you say the first one began at a price of what?

A. 2.30 for the satin weave. They make cheaper bedspreads, in what is called crochet weave.

Q. How about the spread between the two mills on that grade of stuff?

A. To my best knowledge now, the Monument, on that particular thing, are lower than the Stevens article.

Q. Give us an instance.

A. I cannot give an instance of the price at the moment. These things, however, are a matter of record. Their printed price lists are out, and are available to anyone in the dry goods trade, who is interested.

Q. You have spoken about two of the principal mills. You said there were four principal manufacturers. Can you make any comparison [fol. 965] between the other two?

A. Not without referring to their printed price lists,—which are existent.

Q. Would you say that the spread between them was any larger, or smaller, or within the spread between the other two?

A. To my best knowledge the spread would not be any greater, or any less.

Q. Approximately what is the amount, in dollars, that you buy, annually, in your department?

Mr. Newman: Of these commodities?

A. Approximately twenty million dollars a year.

Cross-examination.

By Mr. Thompson:

Q. When you mentioned the figure of approximately three thousand and manufacturers did you refer to manufacturers of what are called grey goods, cotton grey goods?

A. I answered that question, that there were approximately three thousand cotton mills, not necessarily making only grey goods, but all types of dry goods that there are. To clarify that, we have duck mills, sheeting mills, grey cloth mills, gingham mills.

Q. Your ducks which you purchase would then be made by mills other than those which make the gingham and percales that you purchase?

A. Duck mills are almost in every instance organized just for the making of that one product, though there are mills that have other machinery, for making other rough forms of cotton cloth. Duck is cotton cloth in just about as common a state—it needs no great amount of skill; it is automatically produced on looms; and [fol. 963] the element of hand labor in it is very small.

Q. Are percales and gingham both finished products which are made from the unfinished product which is called grey goods?

A. Percales are, but gingham are not. Percales are manufactured very much like a newspaper is printed. It is made from a cloth which is known in the trade as print cloth, and there are various constructions of that, and the principal ones for percales are known as 64 by 60, 68 by 72, 72 by 76, and 80 by 80; and that means the number of threads per inch each way in the fabric, meaning so many threads in the filling per inch and so many threads in the warp per inch—so that 64-60 means 64 warp threads, and 60 filling threads in an inch. Those goods, taking for example, the operations of the largest manufacturer, the American Printing Company, of Fall River—they manufacture grey goods, but nowhere near adequate to the amount that they use, so that they buy in the open market, utilizing these brokers, to buy whichever mills' grey goods it can get for the best price. Then it is their function to put this stuff over their printing machines, and it is printed and colored at the same time; when it comes off of that it requires very little further operation; it is then run over hot rollers, to straighten it out, and then it is folded into pieces, cased, and is ready for the trade, either to be shipped to the garment manufacturer or to the jobber who is going to distribute it to the retailer.

Q. As I remember, you stated that three concerns in New York were practically the only ones that sold percales?

[fol. 967] A. Not the only ones, but the principal ones.

Q. The principal ones?

A. And outside of them there is probably only one manufacturer selling percales; but there is a group who buy this grey cloth and send it to public finishers. Public finishers will undertake work for any reputable business concern. That is what is called converting. Now, converting can either be done by concerns which are known as converters, and sell the goods to the dealer, or a concern, such as Sears, Roebuck & Company or Marshall Field & Company of Chicago will buy this grey cloth, frequently, and send it to these public finishers, who will finish it into percales for them. But I would say that the volume handled in that manner, on percales, is almost nothing as compared with the tremendous product of these three principal manufacturers that I have named and who have a capacity of nearly four million yards per day.

Q. Those three concerns which you mentioned in New York are, then, themselves manufacturers, are they?

A. They are sales agents for the manufacturers.

Q. And those manufacturers for whom they are sales agents both produce the grey goods and do the printing and finishing, themselves?

A. The mills perform all the manufacturing operations, and the selling agents merely do selling—with the exception of M. C. D. Borden & Sons, who are the selling agents for the American Printing Company, and in that instance the ownership of the sales agency and the ownership of the mill is identical—so that no doubt there is a certain amount of the mill's functioning, in the way of [fol. 968] buying supplies, and so forth, done in the sales office.

Q. I just wanted to bring out whether these goods that you were discussing were goods which were manufactured by one concern, and then went through these independent printing concerns?

A. No, these three do not; these three are known as manufacturers of percales; they are not called converters.

Q. And those three manufacturers, I take it, manufacture the large percentage?

A. The bulk of the total product of the country.

Q. Could you state that in approximate percentage?

A. No. I only have a personal opinion on that, and not backed up by any facts; but I would think that it is more than 75 per cent, and might be as much as 90.

Q. In the method of manufacturing and selling gingham, is that the same?

A. That is different; gingham is an article in which ingenuity enters more. Gingham are manufactured in a mill from yarns; the mill may spin those yarns or it may buy them; but in either case they weave the goods, and then there are certain processes of finishing, such as singeing, for example, to take off all the hairy particles that stick to it; it must be scoured, to remove any machinery stains; it is then folded into pieces, and it is ready for the market.

Q. There again the whole process is done by the mills?

A. By the mill.

Q. There are no independent converters who do part of the process?

[fol. 969] A. Converters do not enter into gingham construction at all.

Q. What is the open price association to which you referred as functioning in that grade?

A. The open price association of gingham manufacturers is an organization that I know exists; I do not suppose it is necessary for me to state why I know it exists, but I do know it exists; and I have had described to me, by members of that association, how it functions. I have reason to think that there are open price associations in some other branches of cotton piece goods manufacturing, but I do not know positively.

Q. You do not know the exact name or title of that association, the one functioning in the gingham manufacturing business?

A. I think it is known as the Gingham Association.

Q. As I understand it, in the purchase of ginghams, you buy directly from the mills?

A. No, we buy only part directly from the mills.

Q. And part from brokers?

A. Because, as I described earlier in my testimony, there are two principal methods of marketing; firstly, the mill sells its product directly to the dealer, or sells it through a commission agent, who assumes all the risks of the transaction, guarantees the account, assumes all the selling expense, maintains an office in New York, maintains outside offices, and travels, and so forth.

Q. And you buy partly through each of these methods?

A. From each. And we see no particular advantage, in one system over the other.

[fol. 970] Q. When you were speaking of both ginghams and percales, then, you used the terms "finishers" and "manufacturers", meaning one and the same process?

A. No, I do not mean them to be the same. Public finishers will undertake to finish a piece of grey cloth in any shape that the customer desires; they will color it for you; they will print it; they will mercerize it; they will bleach it; and there are many other things that they can do. They can nap it, for example.

Q. Yes, I understand that. I was just trying to get the course of these trades straightened out; and I thought you just testified that in both the ginghams and percales the public finishers did not materially enter into consideration?

A. They do not, on those two particular fabrics; they do enter, on percales, to some small extent, but they do not on ginghams.

Q. Yes, but you used the term, as I remember it, "finisher", several times, in the course of your examination. I just wanted to have it straightened out as to whether you meant then the public finisher, or were then just referring to a part of the manufacture.

A. If I mentioned "finisher" I meant "public finisher." Whenever I used that term I meant public finisher.

Q. And by "manufacturer" you meant the person who did the whole process?

A. Manufacturer is different, from public finisher.

Q. I understand that. Did you state whether or not there is a trade association functioning in the cotton duck manufacturing industry, or whether you know?

[fol. 971] A. I think there is, I do not know.

Q. You do not know about it?

A. I know that there is a conference of manufacturers, to establish this card list; it could not be established in any other manner; I cannot establish it, as a buyer; it must be a group of manufacturers do that; but that does not fix a price; it merely establishes a basis for price, and market fluctuations are cared for in the discount, which is given at different times.

Q. But you do not personally know of the exact method used to establish that basis?

A. No, but it is reasonable to assume that the card basis is merely the establishing of the relation of one weight of goods to another weight of goods, regardless of by whom made, or one width of goods to another width of goods. To illustrate: No. 6 duck, 48 inches wide, would be fixed at a certain price; then 72 inches wide of the same weight of material would be approximately one half more; that merely sets a basis for the different weights and widths. But the price fluctuation is cared for by the discount. The price of any particular width or weight would not vary over a period of years, but the discount from that price would.

Mr. Darby:

Q. State now whether each manufacturer makes his own discounts; that is not fixed by an association, is it?

A. Each manufacturer, to my best knowledge, and belief, makes his own discount. Otherwise there would be no variation in it.

Mr. Thompson:

Q. From your acquaintance with purchasers and purchasing methods, do you consider it common practice for buyers to make [fol. 972] misrepresentations or false statements when dealing with the sellers?

A. I am glad to say that I do not think that that exists, generally; but I do know that you must find in every group of men a percentage of men who are not necessarily high in ethics. I should say here that frequently innuendo takes the place of a direct misstatement; for example, a buyer could say to a sales agent, "Your price is too high," and if that seller chose to interpret that statement as meaning that he said, and hoped to accomplish by the statement, has been accomplished; he has not perhaps been guilty of a direct statement in saying, "I have been quoted a lower price."

Q. But you consider that as a general matter the business of buying and selling in these lines, which you have testified concerning, is carried on honestly, without misrepresentation?

A. Oh, absolutely, I think that is true, in the greatest number of instances, because there is very little turnover, in the concerns manufacturing cotton piece goods; and professional buyers could not maintain their reputation for integrity, which naturally becomes a part of every transaction, if they were discovered as being guilty of mis-practice.

Mr. Thompson: That is all, I think.

Redirect examination.

By Mr. Darby:

Q. State whether or not in your opinion the open price association such as you have described as existing in a certain part of the [fol. 973] trade is a protection against unscrupulous buyers, a protection to the manufacturer against unscrupulous buyers?

Mr. Thompson: Has he shown any knowledge as to the operations of that open price association?

Mr. Newman: No.

Mr. Darby: Well, of course, he does not know—

A. I think I have made answer to that before; an open price association is a service to the manufacturer or the seller in enabling him to know the condition of his competitor; I have had it explained to me that an open price association means that all transactions and all quotations made by any member of the association are reported to the association, who give out that information to all members.

Mr. Thompson:

Q. But you have no personal knowledge as to the operation of that particular open price association, have you?

A. Only having been told by a member thereof how it functions.

Mr. Darby:

Q. You say most of these manufacturers are confined to a comparatively small district there in New York?

Mr. Newman: Not manufacturers. Commission men.

Mr. Darby:

Q. I mean, their sales representatives.

A. I have testified that they all have their offices in a confined area in New York City, and are no doubt closely in touch with each other at all times.

Mr. Darby: I think that is all.

[fol. 974] DEPOSITION OF G. J. L. JANES, TAKEN, PURSUANT TO STIPULATION, AT CHICAGO, ILLINOIS, ON OCTOBER 23, 1923

G. J. L. JANES, being duly sworn, testified as follows:

Direct examination.

By Mr. Newman:

I live at Chicago, Illinois, and have for 42 years. During all that time I have been a buyer of all food lines. I was with Hillman's, a large department store in Chicago, until about a year ago. I was connected with Hillman's for about 15 years and for many years was in charge of all their good departments, including confectionery and drugs.

The principal staple products in the grocery line are sugar, flour, canned goods, evaporated fruits, teas, coffees, etc.

While with Hillman's I bought all the food lines. I am now President of the American Bureau of Foods, with headquarters at Chicago.

Q. Will you please explain the institution?

A. It is an institution I organized immediately after the time I left Hillman's, a year ago last March,—organized for the purpose of concentrating in one bureau all the necessary technical skill, or the knowledge of it, rather, in the manufacture of bakery goods, confectionery, delicatessen, salads, and food ready for the table. That was the principal object of the organization of the American Bureau of Foods; and I have been continuing to function, in that Bureau, up to the present time. Another enterprise, somewhat an offshoot of that, was organized about six months later—which is [fol. 975] known as the G. J. L. Janes Company, located at State and Adams Streets; there we are engaged in the manufacturing and selling of goods that we manufacture in the various lines, that had been originally fathered by the American Bureau of Foods, in its engineering experience—such as bakery goods, confectionery, table delicacies, and food ready for the table.

Q. Will you please state what was your experience, and what knowledge you have on the subject of the prices at which sugar, flour, canned goods, evaporated fruits, teas and coffees, were sold by the various manufacturers of those commodities, in normal times?

A. As to the variation in prices, and quotations, do you mean?

Q. Yes.

A. My experience extended over the large number of years—42 years—that I have been a buyer of those products, dealing mostly with first-hand people, that is, like the refiners of sugar, in California; and, in the sale and shipment of dried fruits; and, with few exceptions—especially, we will take sugar, the greatest staple—that is based on the quotations direct from the refiners—like the American Sugar Refining Company, Arbuckle's, etc.—there usually was a difference—a variance of about a quarter of a cent.

Q. Per pound?

A. Per pound—or about five per cent variation, in different prices. Seldom did those refiners all quote at one price. The American Sugar Refinery quoted but one price, although they represented quite a number of refiners, but they were subsidiaries largely of the American Sugar Company. But there was competition, like what [fol. 976] we call Arbuckle Brothers, Spreckles of San Francisco; there was always kind of a war on prices, and some cutting. I do not remember any time when they were all uniform on one price.

Q. But what was the rate of variation?

A. About five per cent, I should say. Sugar was five cents; it was a quarter of a cent; and, when sugar was about ten, it was about two and a half per cent of the selling price.

Q. How about canned goods?

A. Canned goods, in the last few years, they have been largely subject to the Cannery Association arrangement, in different localities. For instance, in New York and Wisconsin they get a premium for their peas over Indiana and Illinois, where they do not produce quite as good a quality, and there is a variation of price arising out of quality production; and even in the case of peas in the Wisconsin district there is a variation there between different canners, as to the prices they make, largely arising as to whether any particular value attaches to the name of the canner, or the brand, giving it a better selling value with the public; and the difference usually was covered in that kind of a way; with about as good a value they got about ten cents a dozen more, because they had a more salable product. But, the usual competition, I don't think the association ever controlled the prices, even in that particular line; they indicated just about what the price ought to be, and the canners had to sell at the best price they could get, according to their local market. That was true also of the California Dried Fruit Association, and the raisin association, in which the largest part of California products [fol. 977] are controlled. The main association quoted, of course, one price out there, while a few independents quoted a price a little under them, in order to sell, and there was always that competition, as far as their particular range of prices—that covered the whole line of California products, including canned fruits, dried fruits, and other items they produce.

Q. With all that activity, what was the range of variation, with respect to price?

A. Oh, not over five per cent. Sometimes two per cent would be the difference. That is applying strictly to staples. Two per cent means a good deal to the wholesale grocer. That will usually make the sale, for the concern that wants to get in. Those variations of price are strictly competitive, as far as I could judge, in a general way.

Q. What have you to say on that subject, with respect to evaporated fruits?

A. Well, I am speaking of evaporated fruit, in a general way; the California associations control dried fruits; and another, raisins, and another canned goods.

Q. That is what you call evaporated fruit?

A. Yes; they are a selling organization, organized from the growers out there, a good deal like in Idaho, on potatoes. They are a marketing association, more than a controller of prices; they standardize their qualities, and they sell at fixed quotations,—always against the competition of some independents, that do not belong to the association.

Q. But with all that activity the range would not exceed five per cent?

[fol. 978] A. No, not on the same qualities. They do not need to, in order to make the markets, in that kind of a competitive condition.

Q. What have you to say with respect to teas and coffees, on that subject?

A. Teas and coffees—the manufactured product is a good will proposition, largely. For instance, the Thomas J. Webb Coffee might bring a cent a pound more than an equally good coffee in a can, like McLaughlin's, not so well known, or so generally distributed, but which are quite close together. Five per cent. would pretty well cover the range of prices between the manufactured coffees sold in cans, like Yuban, White House, Savoy brand, and so forth.

Q. What have you to say with respect to green coffees, on that subject?

A. Green coffees are sold in a strictly competitive market, largely based—Santos, and Rio is based on the New York Exchange quotations, and it goes up and down somewhat with the market—an option market, a good deal like wheat is handled. There is the strictest competition in the selling of coffee. There is no combination, that I know of, ever to establish a price—in the primary market, like Brazil, or South America, or over in Europe, where they sell Java coffee.

Q. With all that competition, what is the extreme variation—range of variation?

A. In coffee—green coffee particularly, five per cent. would be very unusual. Two per cent. would make a sale any time, on the same described product, for there is no good will value to a brand of green coffee, to speak of.

Q. What have you to say with respect to flour, on the same subject?

[fol. 979] A. Three brands of flour have been sold on this market, for a good many years—that is, Pillsbury's Four X, Ceresota, and Washburn-Crosby's Gold Medal. There is very seldom any variation in price at all, in the last few years. There used to be, but it is pretty well arranged for now, I guess; that is the way it seems to operate, anyway. I am speaking about mill brands. I am not speaking about bulk flour, that is sold to bakers, and so forth, which is sold on a strictly competitive market. I am talking about those three well advertised brands, that they get about a dollar a barrel more than they would for the same quality, not advertised.

Q. That is the flour that the housewife uses?

A. Yes. Those three brands pretty well cover the market.

Mr. Newman: That is all.

Mr. Thompson: No cross-examination.

[fol. 980] DEPOSITION OF WILLIAM BACON, TAKEN, PURSUANT TO STIPULATION, AT BOSTON, MASSACHUSETTS, ON NOVEMBER 9, 1923

WILLIAM BACON, being duly sworn, testified as follows:

Direct examination.

By Mr. Johnston:

I live at Brookline, Massachusetts and am Treasurer of the Davenport-Peters Company, a corporation engaged in the wholesale lumber business. I have been in the wholesale lumber business for 42 years. Most of the time I have been manager of the business and have done both buying and selling. I am fully acquainted with the purchase of the commodities that I deal with. Our Company handles maple, beech and birch flooring; I should say that we handle about 2½ million feet of maple, beech and birch flooring a year. We sell flooring entirely to retail lumber dealers. We purchase maple, beech and birch flooring under the grading rules of the Maple Flooring Manufacturers Association. We are the representative of Nichols & Cox Lumber Company and very rarely buy flooring from others. We have represented them in this territory for 35 years. When Nichols & Cox could not furnish the flooring we wanted, we have purchased it from others at the lowest price we could get. We have kept informed as to the prices being asked by the various manufacturers of maple, beech and birch flooring by writing occasionally to the manufacturers.

In the Boston territory there are a number of representatives of maple flooring manufacturers. We meet these representatives in competition, but do not obtain prices from them. In selling maple flooring in this territory, I find that competition is very active. [fol. 981] That condition has always existed since I have been in the business. It takes the form of varying prices asked by different wholesalers for the same grade and size of flooring. Sometimes I am able to get the business because my price is lower and sometimes the other wholesaler gets the business. From time to time I have sent out inquiries to a list of manufacturers in order to check up on the market as to prices and in the replies from those manufacturers I have found variations in the prices. There hasn't been much variation. The differences were chiefly that some manufacturers cut their prices but there hasn't been a great deal of difference. I found that the manufacturer who had a considerable stock of a certain grade and size that I inquired about would quote very substantially lower prices than the others for the same flooring. My experience has been that the question of supply and demand has been a controlling factor in determining the price.

The letters you hand me were received by us in response to our request of August 3, 1922 for prices upon certain sizes of flooring and No. 1 maple flooring.

(Said letters clipped together and marked Defendants' Bacon Exhibit 1 were received in evidence.)

The prices quoted by the manufacturers in the letters above mentioned were all prices f. o. b. Boston. I always buy flooring on a delivered basis. Our customers want it that way. They want a price f. o. b. cars Boston or a price on Boston rate of freight.

Q. Have you had occasion to observe the effect of the standardization of the product of maple flooring as the same has been put into [fol. 982] force by the Maple Flooring Manufacturers Association?

A. From my own experience in the lumber business I think it was one of the best things that was ever done to have Association grading rules. It has helped the architect to know what to specify in his contracts. He could tell the customer what to expect and the manufacturer and the wholesaler and the dealer all have these rules to guide them. And we couldn't do business satisfactorily without them.

Q. You have had the benefit of being in the business long before such rules were put into effect?

A. Yes, sir.

Q. And are able, therefore, to compare the conditions before they were put into effect and at the present time?

A. Yes.

Q. And in your opinion the standardization of the product has been, I take it, highly beneficial to the trade as a whole.

A. Those are the exact words to use.

Q. And that benefit accrues to the consumer of the product as well as to those dealing in the product?

A. Every one concerned benefits.

I haven't noticed any tendency to uniformity in price because of standardization. In fact, standardization of the product has tended to broaden the field. New manufacturers have gone into the business because they would know what grading rules they could use in working up their lumber into flooring. Before that everything was at sixes and sevens, they didn't know how to grade flooring.

Standardization is also essential in order to take care of large contracts where it is not possible to get all the flooring desired from one manufacturer. The amount of commission allowed wholesale dealers [fol. 983] by manufacturers of flooring varies. In the letters contained in Defendants' Bacon Exhibit 1 there is a difference between the high quotation and the low quotation of \$6.50 per thousand. Such a difference is not unusual when quotations are received from a group of manufacturers on a given commodity. I have usually found in sending out inquiries that there were several manufacturers who quoted low prices upon a given size and grade, whereas others might be considerably higher than the average.

We have never had occasion to ask for a reinspection. Our firm also handles oak flooring. There is as much difference in the prices

quoted by the different manufacturers of maple flooring for a given grade and size of flooring as there is in the prices quoted by the manufacturers of oak flooring for a given grade and size.

In the Boston territory, we have met competition from Canadian, Vermont and New Hampshire mills. That competition is quite active. A considerable quantity of maple, beech and birch flooring comes into this territory from Canada, Vermont and New Hampshire. In selling flooring it is necessary to sell it at prices which will compete with the prices asked by manufacturers or representatives of manufacturers in Canada and in the New England States. The stock of the Canadian manufacturers is comparable to the stock manufactured by the Wisconsin and Michigan Mills.

Cross-examination.

By Mr. Benton:

We are the exclusive representatives of Nichols & Cox and purchase a great majority of our flooring from them. We rarely purchase from any other manufacturer. I testified that there was but [fol. 984] little difference in the price of the various manufacturers of maple flooring on a certain grade and size.

Q. I take it from your statements, Mr. Bacon, you have deemed it not advantageous to your concern to consider seriously doing business in general with more than one manufacturer?

A. Well, now, I will answer that in this way. It is always desirable for a wholesaler to connect himself with a manufacturer who has as good an article as any on the market and whose prices are reasonable. And people know Nichols and Cox flooring and they turn to us and say, "We want another car of Nichols and Cox flooring" and for that reason it is much better for us to connect with a concern like that than to be, so to speak, shopping around and buying from this one and that one.

Q. I appreciate that. Now, on the other hand, if the prices of the other manufacturers were substantially less than those of Nichols and Cox it would be to your advantage, of course, to deal with more than one? If the prices were substantially less.

A. No, because we find that flooring is sold a great deal by the manufacturer's name and product. Consumers come to know a certain flooring and they will pay a price to get that particular flooring and you might offer them something else equally good at a lower price and they would say, "No, I have had that flooring and I want it on this job."

Q. That is usually a matter of preference?

A. Preference on the part of the consumer.

Q. What do you consider to be the cause for the slight difference in price of the various manufacturers on their lumber? Difference in the freight rates from certain points to Boston or the difference in the particular quality of the flooring of each manufacturer? Don't both of those elements bear upon the prices, to wit, the difference in the freight rates and the difference in the quality of the particular manufacturer?

[fol. 985] A. They all seem to make a price delivery Boston and they may absorb any extra freight in order to reach this market.

Q. But, notwithstanding, all that necessarily has a material bearing upon the price they charge the wholesaler or retailer?

A. The freights don't vary very much from the shipping points to Boston.

Q. Now as to quality?

A. The quality seems to be all the same. Because they are carefully graded under these rules by inspectors.

Q. Now, how about Nichols and Cox? You think their product is in great demand by those with whom you do business?

A. They make no better grades but something, the service and careful attention, clean drying and mill work, ability to furnish mixed cars of different thicknesses and grades.

Mr. Benton: That is all I have to ask, thank you.

Redirect examination.

By Mr. Johnston:

Q. I believe you said the factor you have observed as determining the prices or the difference in prices was supply and demand of the product?

A. Yes. We frequently have letters from people making special prices because of the surplus, and then we write and ask them if they couldn't make a lower price on something else and they say, "We have orders. We are booking ahead."

Q. And it is not infrequent that the spread in prices under such circumstances between the high mill, that is the mill quoting the highest prices and the mill quoting the lowest price will be as much as ten dollars a thousand?

A. Well, not quite so much as that. I should say five dollars, from our experience, would be the spread. Sometimes greater.

Q. Of course, in meeting the competition which you must meet of the other manufacturer's agents or other wholesalers in this territory [fol. 986] you come in contact with the varying prices charged by the different manufacturers? Either directly or through their agents?

A. Yes.

Q. Where you have been endeavoring to secure a large order, Mr. Bacon, and have found that the customer was being quoted a lower price than the price which Nichols and Cox have given you on the desired size and grade of maple flooring, have you had occasion to go back to them and say that you will have to have a price which is so much lower than that in order to meet this competition?

A. No. Nichols and Cox usually give us their prices which they thought were right and we stand or fall by their prices.

Q. You haven't asked them to lower prices, to lower the given price to enable you to give bids?

A. Very rarely do we ask them to meet lower prices.

Q. Occasionally that has been done?

A. Oc-asionally that has been done.

Q. And they have sometimes acceded to your request and sometimes not?

A. They would accede when they had a surplus of stock. It all seemed to depend on their supply and demand.

Mr. Johnston: That is all.

[fol. 987] DEPOSITION OF WILLIAM C. MCCONNELL, TAKEN, PURSUANT TO STIPULATION, AT BOSTON, MASSACHUSETTS, ON NOVEMBER 9, 1923

WILLIAM C. MCCONNELL, being duly sworn, testified as follows:

I am a dealer in hardwood flooring and am President and Treasurer of the McConnell Company and in active charge of the Company's business. We handle oak, maple, birch, beech and pine flooring and sell to the wholesale and retail trade. We wholesale in New England and retail in Massachusetts. Our concern has been engaged in the hardwood flooring business from 20 to 30 years. My father was in the business before me. Upon his death I succeeded him and have been in the business for about ten years. We handle between a million and a half and two million feet of maple, beech and birch flooring a year, a greater part of which would be maple. The flooring that we handle is purchased from the manufacturer. We send out inquiries from time to time in order to obtain prices. The number of mills to whom we would send inquiries has varied. Sometimes we might write five or six other times only two. The general average perhaps would be three or four.

There are a number of manufacturers of maple, beech and birch flooring who have special representatives in the Boston territory. We are in competition with these representatives and naturally learn the prices which they are quoting. From my experience I should say that there is active competition among the manufacturers of maple, beech and birch flooring in the sale of their product to the [fol. 988] dealers such as our Company. The competition is very active sometimes. Of course, if a mill isn't in the market, that is, if they haven't the particular size or grade on hand, they are not so keen for an order. The competition is evidenced by the varying quotations or prices made by the different milles for the same grade and size of flooring. As a general rule, the prices vary substantially. Of course, if flooring is very hard to get and the prices are what you might call high, there would perhaps not be a great deal of difference. Perhaps six months later there might be a difference of from \$10.00 to \$15.00 a thousand. It all depends on conditions. The difference in the prices quoted depends on the supply and the demand. Some manufacturers' stock is not worth as much as another fellow's. He shouldn't get as much as the other fellow. He can't get it.

Since standardization of the flooring, there isn't as much variation

in the quality as formerly, but in the machine work and things like that there is always a slight variance. The difference in quality is not sufficient to account for a large spread in prices. Even if one manufacturer knew another's price, I imagine that he would say he ought to get \$1.00 or \$2.00 a thousand more for his product because he took more pains with it. It has been known for years Cobbs & Mitchell get anywhere from 50¢ to \$1.00 more for their flooring and they find many people who will pay for it.

I found that the supply of a given size and grade of maple flooring that a manufacturer has on hand makes a difference in the price which he quotes. If he is overstocked and wants to move it [fol. 989] quickly, he will make a price to move it. The supply of a commodity is one of the great factors in determining the price. I have found that a manufacturer who is practically sold on a given grade and size of flooring is rather firm in his price whereas the manufacturer making the same flooring who has a large stock on hand will cut his price very substantially in order to move it.

Sometimes we wire an offer and they accept the offer. Other times they wire us to get an offer on it. This variation in prices for the same quality and grade of maple flooring has existed ever since I have been active in the business. There has never been a time when all the manufacturers of maple flooring, to my knowledge, were quoting a uniform price.

In the sale of maple flooring in Massachusetts, we come into competition with other dealers and the special representatives of manufacturers. Competition with them has been very active since I have been in the business. This competition takes the form of variation in prices. Sometimes we are able to quote a lower price than our competitors and at other times we are not. Whether we are able to quote a lower price would be largely governed by the fact that a manufacturer, by reason of having an oversupply of a particular item, would make us a better price than the other manufacturers were able to make our competitors. It frequently happens that when a manufacturer has quoted us a certain price and we have an opportunity to sell at wholesale a large quantity of flooring, we wire the manufacturer that we must have a lower price in order to meet competition. Sometimes he makes us a lower price to enable us to [fol. 990] meet competition and others times he does not.

We buy our flooring outright in most instances, to fill particular orders. Our customers want a delivered price. They are not interested in what the flooring costs at the mill, but in what it is going to cost them at the particular place where the flooring is to be used. Accordingly we have to quote delivered prices. We don't care what it costs at the mill. We have never had any difficulty in getting an f. o. b. mill quotation, and as I understand it, the manufacturers will quote anywhere in the United States.

I know that for some years the Maple Flooring Manufacturers Association has been attempting to standardize maple flooring. We had occasion to ask for a reinspection only once. Then the inspector came out her- and satisfactorily adjusted the matter. It was a

very good thing for us. He decided against the mill which shipped the flooring.

Q. Now, what would you say has been the effect of the standardization of the product put into operation by the Maple Flooring Manufacturers Association?

A. Well, of course, it has given the customer a knowledge of what he was really going to get. And it has given us a basis where we had a definite article we could sell. We knew what it would contain and it wouldn't contain any qualities worse than what was specified in the rules. Of course, if we didn't have that business would be more or less demoralized. You wouldn't know what you were going to get.

Q. So from your observation it is your experience that the adoption of uniform standards in the maple flooring industry have been beneficial to the trade as a whole?

A. Yes, sir, very much so.

[fol. 991] Q. And that benefit accrues to the ultimate consumer of the product does it not?

A. Yes, sir.

Q. As well as to those who are dealing in it?

A. It accrues to the consumer more than it does to us because in the final analysis he is the man who gets the goods.

Q. The effect of standardization has been, hasn't it, to permit the filling of large orders from several different mills?

A. Yes, sir.

Q. Without being obliged to fill the order from one particular mill.

A. Yes, sir, that is true.

Q. And you find, do you not, Mr. McConnell, that this has rather broadened the market to which you can apply?

A. Yes, it has broadened the market, but not only that, it has helped any dealer who is carrying a stock, because if he got down to four or five thousand feet in his warehouse in one mill's material he could bring in a car from another manufacturer, providing he could buy cheaper or for whatever reason he wanted to do so and put it in his original stock and if he got an order for ten thousand feet he could use five from each car and it would go together all right.

Q. All of which, I take it, from your statements, you regard as being a great benefit to the trade as a whole?

A. Yes, sir.

Q. And to the consumers of the product?

A. Yes, sir.

Q. I believe you said, Mr. McConnell, you have at all times since you have been in business found the various manufacturers of maple flooring in active competition to sell their commodity, maple, beech and birch flooring?

A. Yes, sir.

Q. And willing, wherever their supply on hand justified it, to make every effort to get the business and meet competition by reduction of prices.

A. They have to meet it.

Q. And there has never been a time, in other words, where the business was parceled out to one manufacturer in one territory and another manufacturer in another territory?

A. No.

Q. There has always been a fight for the sale of the product so [fol. 992] far as you observed?

A. Of course, some mills might be able to quote lower prices in a certain territory. For instance, a Michigan mill hasn't as favorable a freight rate to Boston as a mill would have located in the Adirondacks or perhaps some points in Canada, so they might not be able to come into a certain territory, and they couldn't because freight rates went against them.

Q. Do you meet much Canadian competition?

A. Yes, sir, we meet quite a little of it.

Q. And that maple flooring is in competition with the Wisconsin and Michigan flooring?

A. Yes, sir, the prices on the Canadian flooring are low. We have to meet that competition very severe competition.

Q. And there is a considerable quantity of that flooring comes into this territory?

A. Yes, sir.

Q. You also meet here the West Virginia flooring competition?

A. Not much from West Virginia but quite a lot from the Adirondacks and New York State. And then we have a little competition from Vermont.

Q. Vermont is now manufacturing quite a little maple flooring?

A. Yes, sir, quite a lot if it.

Q. And do you know any of the mills up there, the names of any of those mills?

A. Yes. Parker-Stearns at St. Johnsbury, Vermont. And a mill at Morrisville, George Morris, at Morrisville. There is the Asa Lumber Company, maple flooring manufacturing. They are up at—in New Hampshire, I don't remember the town. It is a small town up there. And I should say there are possibly fifteen mills throughout Vermont, New Hampshire and Maine. Of course, they are not large, as large as the western mills, but they are always in competition.

Q. And in the aggregate they manufacture and ship into this territory a considerable quantity of maple flooring?

A. Yes, sir, ship quite a large quantity.

[fol. 993] Q. So it is necessary for the representatives of the Wisconsin and Michigan mills to meet that competition?

A. Yes, sir.

Q. And meet it by quoting as low or lower prices?

A. Yes, sir.

Q. The product of those Vermont, New Hampshire and Maine maple flooring mills comes into this New England territory principally, I suppose?

A. Well, I think it gets down into New York, too.

Q. Yes, they probably ship into New York.

A. Of course, the Canadian mills, well, they are practically, you

may say the same as the Vermont mills. They are not very far distant. Perhaps one hundred or two hundred miles. Seaman and Kent is a large concern. They have four different mills.

Q. And their product comes into this territory just about as freely as the Vermont and New Hampshire mills?

A. Yes, sir.

Q. They make a good quality of flooring?

A. Yes, sir.

Q. The flooring of these northern mills in the New England States and Canada is comparable to the flooring of the Michigan and Wisconsin mills?

A. Yes, sir.

Mr. Johnston: I think that is all.

[fol. 994] Cross-examination.

By Mr. Benton:

We purchase from Kneeland-Bigelow Company of Bay City, Michigan, from William Horner, from the Indiana Flooring Company, from Cummer-Diggins Company and various Vermont mills. We purchase most of our flooring from Kneeland-Bigelow Company.

The machine work of some manufacturers is not so good as that of others. Of course that affects the quality of the flooring.

Q. Does not the difference in the quality of each manufacturer's flooring have a material bearing upon the price that they charge for their flooring?

A. Why, it is materially different to a small extent. Of course, by that I mean a manufacturer could get one dollar or perhaps two dollars a thousand more for the quality of the flooring but he would not be very likely to get five or ten or fifteen, as much as the market fluctuates at times.

Q. But he does get a considerable different in price which amounts to dollars and cents?

A. Well, of course, it depends on what you consider a considerable difference. One dollar a thousand is not much on a product which is selling at the rate of one hundred and ten dollars.

Q. When you buy a considerable quantity at a time that does mount up?

A. Well, it makes enough of a difference to change the orders. I can put it that way.

Q. That is what I want to know. Now, does not the difference in the freight rates from the various points where the manufacturers are located necessarily have some bearing upon the prices of the various manufacturers because they can ship cheaper, some of them, than others?

A. Well, a mill in Vermont, of course, could ship cheaper than a mill in Michigan but I don't think there would be enough difference [fol. 995] in mills in different towns in Michigan.

Q. But there is a difference in mills in Michigan and those in Wisconsin.

A. It is my opinion the freight rate is the same.

I buy possibly 20% of my stock from Vermont, New Hampshire, Maine and Canadian companies. I couldn't give the average spread between the prices of the different mills because sometimes some mills would be way down if they have a large stock of flooring they want to move. That isn't usual, but you can always find one manufacturer who has something he wants to sell badly. I don't always go to the same manufacturer to see if he has that. The price of one manufacturer who has a large quantity on hand is sufficient low to justify my sending out inquiries to each and every manufacturer in order to ascertain who the low man is. I haven't done so because we believe that by giving one mill most of our business, as an average we would be better off than by buying around here, there and the other place.

Redirect examination.

By Mr. Johnston:

We handle substantial quantities of other hardwood flooring. The variation between the prices asked by the manufacturers of maple flooring for a given grade and size is as great as the variation between the prices asked for oak flooring of a given grade and size. The same is true with respect to pine. Sometimes the variation is greater between the prices quoted by the maple flooring manufacturers. At other times it is greater in the oak and pine and vice versa. The difference between the prices quoted varies according to market conditions. There is a very great different in oak flooring today because the market is dropping and some mills are very much lower [fol. 996] than others, as much as \$20.00 a thousand. In a falling market in maple flooring the same conditions exist. All manufacturers of maple flooring quote us f. o. b. Boston prices.

[fol. 997] DEPOSITION OF RALPH A. BROWN, TAKEN, PURSUANT TO STIPULATION, IN NEW YORK CITY ON NOVEMBER 7TH, 1923

RALPH A. BROWN, being duly sworn, testified as follows:

Direct examination.

By Mr. Johnston:

I live at Bayside, Long Island. I am associated with John A. Daley Lumber Company, 350 Madison Avenue, New York City. We specialize in white pine, hardwood lumber and hardwood flooring. Our concern has been in business under that name since February 1st, 1922, and it handles about 2,000,000 feet of maple flooring a year. I have been engaged in the lumber business since 1904. With the exception of the first four or five years I have been connected with the handling of hardwood flooring continuously,

in Pennsylvania, the South, Maryland, West Virginia, New England and Eastern States. Practically all my experience in hardwood flooring has been selling as a wholesaler or as a mill representative. My first mill connection was with the W. M. Ritter Company, Columbus, Ohio, on August 1st, 1907. I remained with them until the end of October, 1910. On November 1st, 1910 I became associated with the Strable Manufacturing Company, now known as the Strable Lumber & Salt Company, of Saginaw, Michigan, and opened a New York office for them as manager and remained with them until May 1st, 1917. From May 1st, 1917 until my association with the John A. Daley Lumber Company I handled flooring and hardwoods and other lumber on my own account at wholesale and on commission, and continued to represent the Strable Lumber & Salt Company on a commission instead of a salary basis. John [fol. 998] A. Daley Lumber *Lumber* Company has been handling chiefly stock of the Strable Lumber & Salt Company and Holt Hardwood Company, and the stock of possibly half dozen other mills who manufacture maple flooring. In selling maple flooring I have come in competition with other manufacturers of maple flooring and their representatives. There has always been competition in the sale of maple flooring in the Eastern market from the very beginning of my connection with it. Competition takes the form of variation in prices quoted by manufacturers of maple flooring or their representatives. Of course, sometimes the matter of delivery also is a factor. However, the matter of price is the chief factor and competition has always existed in the industry with respect to price. There have been times when quite a number of manufacturers of maple flooring would be quoting similar prices, but it was rare that the prices would be uniform. There was always somebody that would cut under the price on any very large order. Practically all the mills soliciting business in this market were members of the Maple Flooring Manufacturers Association and they were competing against one another in the matter of prices. The supply of any particular grade or size of flooring that a manufacturer had on hand would also be a factor and the tendency would be for a manufacturer who had a large supply of a particular item on hand to quote a lower price than the manufacturer who did not have such a supply. We hear of this from our customers—that some mill had a good supply and were making special prices or were offering to meet the best prices quoted or something of that kind or better. We frequently get stock lists from various manufacturers, and generally [fol. 999] where a manufacturer is long on any particular sizes or grades, he lowered his prices. Sometimes if he was oversold on any particular size or grade the tendency was not to reduce his price to meet competition, but on the contrary, sometimes his prices might be higher. In representing the Strable Company I from time to time had occasion to advise said Company to lower their prices in order to meet legitimate competition when they had the stock on hand to fill orders. Naturally when they were oversold on a certain size or grade, we could not meet competition against somebody that was long and that was cutting the price to move the stock. I

was frequently advised by Strable Lumber & Salt Company to meet competition by quoting prices which would be attractive and get the business.

The John A. Daley Lumber Company sends out from time to time general letters of inquiry among maple flooring manufacturers in order to obtain quotations especially for large amounts of flooring or mixed cars when we are uncertain as to what mill can furnish the stock and where the time of delivery is either immediate shipment or future shipment. I have got from our files all such inquiries and replies thereto that I have been able to find. We destroy a lot of our correspondence at the end of each year or after we have received information. We keep only such answers as we use, and if we lose the business we destroy the inquiry and the answers thereto. We keep only current price lists or inquiries and answers until we either get the business or lose it. The inquiries and replies that I have with me do not represent all the inquiries and replies that have been sent out or received from time to time. They are all that we [fol. 1000] have at this time. When we moved our office in April, 1922, we destroyed considerable correspondence. The papers marked Defendants' Brown Exhibit 1 are a general form letter sent out by John A. Daley Lumber Company on May 20, 1922, reading as follows:

"Form Letter to Maple Flooring Manufacturers in Wisconsin, Michigan and Illinois

GENTLEMEN: Please quote us very best prices delivered New York rate, for shipment in three to four weeks stating best wholesale discount on usual cash terms:

15 M' 13/16 x 3 3/4" fc. #1 Maple flooring.

3 M' 13/16 x 2 1/4" fc. Clear Maple flooring.

As we are handling considerable hardwood flooring right along, we would be pleased to receive your latest stock and price lists on flooring, also lumber, and as issued.

Thanking you in advance for prompt reply, we are,

Yours very truly, (Signed) John A. Daley Lumber Company. RAB:KK."

That letter was sent to and replies were received from Sawyer-Goodman Company, Marinette, Wis., Robbins Flooring Co., Rhineland, Wis., Bigelow-Cooper Co., Bay City, Michigan; John Schroeder Lumber Co., Milwaukee, Wis.; J. W. Wells Lumber Co., Menominee, Michigan, W. D. Young & Co., Bay City, Mich., Grand Rapids Trust Company, Receiver William Horner, Reed City, Michigan; Ward Brothers, Big Rapids, Michigan; Flanner-Steger Land & Lumber Company, Blackwell, Wisconsin.

In response to the foregoing letter we received the following quotations [fol. 1001]:

On 13/16 inch by 3-1/4" No. 1:

Sawyer-Goodman Co.....	\$85.25
Robbins Flooring Co. (Sam E. Barr).....	74.00
Bigelow-Cooper Co.....	80.25
John Schroeder Lumber Co.....	76.00
J. W. Wells Lumber Co.....	75.00
W. D. Young & Co.....	75.25
William Horner.....	84.50
Ward Bros.....	71.50

On the 13/16 x 2 1/4" inch Clear:

Sawyer-Goodman Co.....	99.00
Robbins Flooring Co. (Sam E. Barr).....	99.00
Bigelow-Cooper Co.....	99.00
John Schroeder Lumber Co.....	99.00
J. W. Wells Lumber Co.....	99.00
W. D. Young & Co.....	104.00
William Horner.....	99.50
Ward Bros.....	98.75

All the above quotations were for delivery f. o. b. cars New York, and all quotations except those of the John Schroeder Lumber Company were subject to \$2.00 a thousand commission, which is the usual commission allowed to wholesalers.

(Said Defendants' Brown Exhibit 1, received in evidence.)

The papers marked Defendants' Brown Exhibit 2 for identification were quotations and letters written to the John A. Daley Lumber Company by the Holt Hardwood Company on December 13, 1922; by the East Jordan Lumber Company on December 1st, 1922, and the Strable Lumber & Salt Company on December 1st, 1922. Said letters were received in the ordinary course of business.

(Said Exhibit was received in evidence.)

The quotations made by the manufacturers above named were as follows:

[fol. 1002]

Holt Hardwood Co.:

	13/16 x 1 1/2"	13/16 x 2 1/4"	13/16 x 3 1/4"
Clear face maple.....	\$86.50	\$108.25	\$87.50
No. 1 " ".....	.....	98.25	79.50

Strable Lumber &
Salt Co.:

Clear face maple.....	98.25	103.25	89.00
No. 1 " ".....	86.25	93.25	84.00

East Jordan Lum-
ber Co.:

	13/16 x 1 1/4"	13/16 x 2 1/4"	13/16 x 3 1/4"
Clear face maple.....	103.25	89.25
No. 1 " "	93.25	79.25

Referring back to Defendants' Brown Exhibit 1, I should say that the variation in prices shown in said Exhibit would be typical of the variations during that period. I did not save out this particular inquiry and the answers thereto for any special reason. We just happened to have these old quotations filed away, they having been overlooked and not destroyed.

The letter you hand me dated February 8, 1923, addressed to the John A. Daley Lumber Company by the East Jordan Lumber Company was received in the ordinary course of business. The paragraph in said letter reading as follows:

"We are especially concerned over our 3 1/4 inch clear. Last year Kerry & Hanson Flooring Company beat us to it with a sale on theirs, and a good deal of what we have on hand has been here nearly a year. Our present prices are, we believe, quite a little less than most manufacturers are asking, but we wish you would have this item in mind and in case of any orders on which you need a lower price competition, we would almost feel like cutting the price another dollars or so rather than see prompt shipment business get away,"

is typical of similar statements that we have received from time to time from various manufacturers when they had on hand a stock of maple flooring of a particular grade and size which they desired to move.

[fol. 1003] All the price lists and quotations which you hand me, Exhibit 3, which are addressed to J. A. Noone of Brooklyn, New York, were received by us in the ordinary course of business and were taken from our files.

(Said papers marked Defendants' Brown Exhibit 3 for identification.)

When we ask for quotations usually ask for f. o. b. cars New York or other points where we wish to make delivery. We have never had any difficulty, however, in securing quotations f. o. b. mill from members of the Maple Flooring Manufacturers Association. We usually ask for prices f. o. b. cars destination because we sell practically everything in the flooring line delivered. Our customers prefer to purchase on that basis and we are protected by manufacturers as to freight charges.

My experience has been that the standardization of maple flooring has been beneficial to the trade. It has been beneficial with respect to uniform matching of the flooring and uniform grades so that when a certain grade is asked for it can be obtained, not necessarily from one particular mill, but from several mills. Standardization makes

competition better and, in my opinion, increases rather than decreases competition. It provides a wider field from which a buyer can select flooring for a particular job.

I have had occasion to ask for the reinspection service maintained by the Maple Flooring Manufacturers Association. Such service has been beneficial to the trade. It insures the purchaser of maple flooring fair treatment and the delivery of exactly what he has contracted to buy. I do not think that the Maple Flooring Manufacturers Association [fol. 1004] has had the effect of keeping up the prices of maple flooring above the level which the ordinary law of supply and demand would put it. Our experience has been that we have had reduced prices where manufacturers had a surplus or were anxious to make quick shipments and dispose of stock. Sometimes they want to make room in their sheds for alterations or repairs or release money tied up in a large amount of stock of a certain item. The spread of prices upon any particular grade of flooring evidenced by the answers in reply to our inquiry of May, 1922, is as great as the spread in prices for other hardwood floorings. There is as much variation in the prices quoted by members of the Maple Flooring Manufacturers Association as there is in the prices quoted by other hardwood manufacturers.

Cross-examination.

By Mr. Thompson:

I have known of the existence of the Maple Flooring Manufacturers Association ever since I have been in the lumber business, or for about 19 years. I have seen lists of members of said Association or the different members would have the statement on their stationery that they were members of the Maple Flooring Manufacturers Association. Before being connected with the John A. Daley Lumber Company I sold flooring largely on commission, but did make some purchases where I handled it on my own account, buying it and in turn invoicing it direct to my own customers.

"Q. You spoke about these inquiries and answers which have been introduced in evidence as being typical, for the period of the last few years. Have the last few years in that *in that* industry been what [fol. 1005] you would call normal ones?

A. There was a time right after the war when we had a runaway market of rising prices, and then there was a runaway market in the the other direction, downward; so there were some big fluctuations, more specially in 1920. But I had in mind there that the prices the last few years have been higher than when I first became connected with the maple flooring business or rather with the Strable Company in 1910, at which time the prices were lower, and then the relative difference per thousand feet in price was on a smaller basis, that is a dollar or two, where we might now find four or five dollars difference—or three to five, I would say.

Q. During the upward runaway market, anybody who had flooring or any kind of lumber to sell, could practically get whatever price he wanted to ask, could he not?

A. He could, within reason; if the fellow wanted it badly enough.

Q. There were certain limits?

A. Yes.

Q. But the limits were very high during that period, were they not?

A. Yes, sir, because the prices were changing almost from week to week.

Q. And that is an abnormal situation, which is not ordinarily found?

A. Yes, sir, it was abnormal.

Q. Then during the runaway market in the other direction, as you phrased it, it was generally the case that people were caught with large stocks which they had to unload at practically any price they could then get?

A. Yes, sir.

Q. And those conditions made for more divergence and less uniformity in price than would be found in normal conditions?

[fol. 1006] A. Yes, sir."

We do not send out a general letter of inquiry to more than half a dozen manufacturers.

"Q. During the time that you have known of the existence of the Maple Flooring Manufacturers Association, have you known of the activities that that association has carried on?

A. No, I have not been very familiar with their activities, except that they issue a price book and rate book, which practically everybody uses, to determine delivered prices in various parts of the country.

Mr. Johnston: You are referring to the freight rate book?

The Witness: Yes, sir.

Q. It is what is called a table of values?

A. Yes, sir, a table of values.

Q. Is that list furnished to you?

A. Yes, sir.

Q. By the companies which you represent?

A. Yes, sir.

Q. Do you know whether or not that list is furnished to representatives of other companies with whom you are in competition here?

A. I do not know definitely, but I presume it is.

Q. When you have spoken of prices being cut or your cutting prices in order to obtain business, you mean cutting the prices in that rate book or that table of values?

A. Well, it might not be necessarily cutting the prices in the table of values, because that is gotten out and used as a basis—so much over or long base; and if the market prices were over list we [fol. 1007] might cut down the prices, but they would still possibly be above the list in that book. You can see what I mean; that is, sometimes these lists would go along for months and, to save printing, they would just say "add" or "deduct" so much from list. That simplified sending out a lot of price lists every little while.

Q. Is that list furnished you as the basis for the prices that you are supposed to quote?

A. It has been generally; but now we get frequently individual lists, as shown in some of these exhibits, that will vary.

Mr. Thompson: I think that is all."

Redirect examination.

By Mr. Johnston:

Q. Most of the manufacturers, Mr. Brown, have been sending out these price lists from time to time?

A. Oh, yes.

Q. And you have gotten those for a good many years, have you not?

A. Yes, sir.

Q. And those price lists would be sent out sometimes once a month; sometimes oftener?

A. Yes, sir.

Q. Sometimes in the middle of the month?

A. Yes, sir.

Q. And by price lists I mean such lists as this list addressed to you, December 1st, 1922, by the Strable Lumber & Salt Company?

A. Yes.

[fol. 1008] Q. It is the common practice of all manufacturers of maple flooring to send out these price lists from time to time?

A. Yes, sir.

Q. As well as to make individual quotations?

A. Yes, sir. Then this rate book is based on New York; if we want to figure Boston, we just turn to the rate book and figure it out, delivered price there, so much additional over New Yrk.

Q. In other words, as I understand the use to which you put the rate book is to determine the freight rate to use to these various points where you desire to deliver maple flooring?

A. Yes, sir. It has been some years since they would quote so much on or off the list. I don't know how far back.

Q. You do not know anything about the organization of the various associations, do you?

A. I am not familiar with that.

Q. Or whether there has been one association or a number of different associations, one succeeding the other?

A. No.

Q. You are not advised on that point?

A. No, sir.

Q. When you say "association" you have reference to an organization by that name?

A. Yes, sir.

Q. Whether it is now the same one that existed two or three years ago, you do not know?

A. I do not know, except as a general organization of people in that line of industry.

[fol. 1009] Q. Now 1922 is a fairly normal year in the maple flooring business, is it not?

A. Yes, sir, since the big prices about 1920 it has come down more normally.

Q. There was a very great fall in 1921?

A. Yes, sir.

Q. But in 1922 and so far in 1923 it has been fairly normal?

A. Fairly normal.

Q. Without those wide swings up or down?

A. Yes, sir.

Q. So that the comparison of prices which are made here in this inquiry, in May, 1922, I take it represents in your judgment a fairly normal period?

A. Yes, sir.

Mr. Johnston: That is all.

Mr. Thompson: That is all. I desire to offer in evidence the entire letter dated February 8th, 1923, from which counsel read one paragraph in evidence.

The paper was marked Defendants' Brown Exhibit No. 4. November 7th, 1923, A. G. and received in evidence.

(Discussion off the record.)

Mr. Johnston: It is agreed between counsel that J. A. Noone of Brooklyn, New York, a dealer in maple flooring would, if present, testify that he received from the Grand Rapids Trust Company as receiver of William Horner the letter dated February 14th, 1923, and the letter dated February 16th, 1923, which is attached to and is a part of Defendants' Brown Exhibit 3 for identification.

[fol. 1010] I therefore offer in evidence as Defendants' Brown Exhibit 3 the several price lists and letters which form a part of that exhibit for identification.

The papers were marked Defendants' Brown Exhibit 3, 9 sheets, November 7th, 1923, A. G. and received in evidence.

By Mr. Johnston:

Q. I ask you, Mr. Brown, to read into the record the comparisons of the prices as shown on said price lists and letters, Defendants' Brown Exhibit 3.

A. —.

Feby. 1923.

	13/16x2" clear	13/16x2¼" clear	13/16x2" No. 1	13/16x2¼" No. 1
East Jordan Lbr. Co.	98.25	.....	88.25	.....
Horner	101.50	108.50	.....	98.00
Holt Hardwood Co.	93.25	98.25	63.25	68.25
J. W. Wells Lbr. Co. . . . .	.....	108.25	.....	98.25

	13/16x2 factory	13/16x3¼ factory	13/16x3¼
Horner	53.00	57.00	.....
J. W. Wells Lbr. Co.	53.25	59.25	.....
	13/16x3¼" clear	13/16x3¼" No. 1	13/16x3¼" factory
East Jordan Lbr. Co.	84.25	.....	54.25
Horner .....	.....	84.00	57.00
J. W. Wells Lbr. Co.	94.25	89.25	59.25"

[fol. 1011] DEPOSITION OF GEORGE A. YAEST, TAKEN, PURSUANT
TO STIPULATION, AT NEW YORK CITY, ON NOVEM-
BER 7TH, 1923

GEORGE A. YAEST, being duly sworn, testified as follows:

Direct examination.

By Mr. Johnston:

I live at Rutherford, New Jersey, and am at present connected with Sam E. Barr. I have been connected with Sam E. Barr off and on since 1903. I was formerly with the J. W. Romine Lumber Company and was with them for about three years. After that I was with the Lamb-Fish Lumber Company for about five years. Neither of the firms last above mentioned handled maple flooring. I went back with Sam E. Barr during 1912 and have been with him ever since. I am general sales manager. I purchase and sell maple flooring and hardwood lumber. Sam E. Barr handles all the way from two to ten million feet of maple flooring a year, according to business conditions. He sells to retail lumber yards and warehouse operators generally throughout the Eastern states. He also sells oak flooring and beech and birch flooring, although the amount of beech and birch flooring sold in this territory is very small. Barr sends out inquiries to various mills from time to time and buys from the one that gives him the best price, provided the flooring is as good as that of some other manufacturer who might quote a higher price.

"Q. About how many mills ordinarily, Mr. Yaest, do you send such inquiries to?

A. Well, that depends on the inquiry itself. If it is for stock we are looking for that is a standard item we usually send it out to a few, but if it is a hard item to get, unless we are looking for some information as to what others are doing, quoting, then we will send [fol. 1012] it to thirty or thirty-five, maybe twenty-five, maybe twenty you cannot tell. I will pick out to whomever I want to send

it to. If it is an item that is standard and very easy to get, I may send it out to a few, say a dozen.

Q. And if it is a harder item to get you would send it out to practically—

A. To all those whom I know who would manufacture that item."

We get stock lists at various times from different manufacturers and of course if we know that the manufacturer does not have in stock the particular grade and size, we do not send any inquiries to him when we are in the market for that grade or size. You asked me to search our files for such inquiries and replies. I am not going to take the time to do it. Most of our quotations are kept for about thirty days and then are destroyed.

Q. And that therefore a search of your files would not disclose any such inquiries or replies?

A. No, the only way you might be able to pick them out is maybe on some certain items we were looking for, if they quoted us on half a dozen items, we might have picked out one or two of those and in most cases then those, the entire quotations or letters would be filed with that order that we have them under our order number.

Q. But the quotations which were made by other mills would probably not be saved?

A. Would probably not be saved, yes."

We surely have found variations in the prices quoted by the different mills in response to our inquiries for prices upon the same [fol. 1013] grade and size of maple flooring. That variation has been quite substantial. During the period that I have been engaged in handling maple flooring variations in prices have always existed.

Referring to Defendants' Brown Exhibit No. 1, I should say that the variations of prices shown in said exhibits are typical of the variation which I have found. There has never been a time in my experience when all the manufacturers of maple flooring quoted the same price. It has never come to my notice that the prices of maple flooring manufacturers were substantially uniform. In the sale of maple flooring I find that there is now and always has been quite active and keen competition in the form of varying prices by different dealers. We come in competition with other large wholesalers and representatives of different mills. Very often we learn through customers or representatives of manufacturers the prices that are being quoted. Sometimes a customer will say, "Well, we are able to beat your price by a couple of dollars or two or three dollars" or something like that. In selling to retail yards we find that various prices are quoted. That competition has existed ever since I have been in business.

In my opinion the standardization of maple flooring by the maple flooring manufacturers Association has been beneficial to the trade and to the consumers of maple flooring. The standardization of flooring has tended to make more competition. We buy our flooring delivered because then we have no freight claims to fight in case of overcharges. Our customers will not buy flooring any other way, and that is the reason we buy f. o. b. cars destination. A great

[fol. 1014] many of the manufacturers will make you an f. o. b. mill price with freight allowance to New York City or Boston or any other point where you want the flooring delivered.

We have not had occasion to use the reinspection service very often because most of the flooring that we have received has generally been satisfactory. I think we have had only one reinspection since 1914 and that was on some flooring that Horner shipped to Springfield. Such experience as we have had with the reinspection service has been satisfactory. This service insures the purchaser of flooring a fair delivery and a fair inspection. I should say that the Maple Flooring Manufacturers Association has been beneficial to the trade. A good many of the manufacturers are represented in New York either by special agents or wholesalers who specialize in their flooring. These special agents and other wholesalers are in active competition with our firm and that competition is very keen. It has happened that where a manufacturer of maple flooring has quoted us a price and we have advised said manufacturer that others are quoting a lower price, said manufacturer has made a lower price in order to meet competition. The price depends on the surplus that the manufacturers have.

"If they have not got the item that you are looking for they are going to hold to their price, whatever they have in mind that their stock is worth, regardless of whether you offer them the business or not. But if they have a surplus of it they might cut their price.

"Q. And the extent to which they will cut their price you have found, I take it, depends on how large their surplus is?

A. I do not believe they will cut their price over two or three dollars a thousand. I don't remember of any of them doing that. They might give you a low price to start with if they had a surplus of it.

[fol. 1015] Q. If they had a surplus their original quotation upon that would be low?

A. Yes.

Q. That is as compared with the general scale of prices?

A. Yes.

Q. Then if they were anxious to move that they might cut that price two or three dollars?

A. Yes, if you tipped them off that somebody else had some and was willing to sell for a lower price than what they quoted you. Sometimes we can get that information, and if you tell them about it, it very frequently means that they will meet the other price, and if we are close enough to our customer then we can get the business."

The variation in prices on maple flooring is not so large as the variation in prices on oak flooring. Recently there was a difference of \$18.00 a thousand feet between the high and low quotations received by us on maple flooring. Very frequently on half a dozen quotations the difference will be as much as \$5.00 a thousand feet.

Cross-examination.

By Mr. Benton:

I am familiar with the activities of the Maple Flooring Manufacturers Association. We are not a member of said association. I know the members by name and at times we have had flooring from probably all of them. We do care whether we buy from a member of the Association or not because if we buy from a member of the Association and there is anything wrong with the flooring we have a right to have the flooring reinspected. That is not true when we buy from a non member. All the manufacturers of flooring, whether maple, oak, beech or birch, look up to the Association and use their rules. The spread in the manufacturers' prices on [fol. 1016] maple flooring is not due to the difference in grade and quality of the flooring. You can take a dozen manufacturers and their grades will be practically the same as to quality because they use the same grading rules.

[fol. 1017] DEPOSITION OF RAYMOND W. STORM, TAKEN, PURSUANT TO STIPULATION, AT NEW YORK CITY ON NOVEMBER 7TH, 1923

RAYMOND W. STORM, being duly sworn, testified as follows:

Direct examination.

By Mr. Johnston:

I am one of the partners of George H. Storm & Company, lumber merchants, who have been doing business since 1898. I have been actively connected with the business since 1909 and generally handled the purchasing and selling of flooring. We deal in all kinds of hardwood and soft wood lumber in general building sizes. Our firm has been handling maple flooring since 1898. I should say that on an average we handle about 2,000,000 feet a year. We sell principally to dealers and carpenters in the New York territory. We do a small wholesale business and a large retail business. We handle all kinds of flooring. Before buying we generally send out inquiries to the mills throughout the country and buy from the manufacturer that makes the lowest price. In that way, we are familiar with the quotations made by various manufacturers of maple flooring. Very often these quotations would vary. At times the variation would be substantial, not always. I don't think there was a case when the prices would be the same.

"Q. And what would you say would be a normal variance during a normal year. I mean what would be the extent of that variance?

A. Perhaps \$5.00 a thousand.

Q. Per thousand feet?

A. Per thousand feet board measure."

[fol. 1018] All the quotations that we receive are not kept together, but are filed under the names of the various mills. In order to get quotations on the same item, it will be necessary to go through the old files and pick them out. It would be quite a laborious process. During the last two or three years we have been acting as special representatives for the kneeland-Bigelow Company and the Oval Wood Dish Corporation. Most of our inquiries are sent to these two companies except when they could not supply what we want. The two mills that we have represented send out their printed price lists from time to time.

"Q. What has been your experience as to the manufacturers departing often from that printed price list in order to meet competition or in order to meet the market price if you please, of maple flooring in a given market?

A. Well, I should say that in the majority of cases that we have bought from them at prices which were less than their lists. In other words, that they have always been willing to meet competition, that the price list had very little bearing on their ultimate selling price.

Q. What have you found from your experience, Mr. Storm, to be the controlling factor in determining the price at which a mill will sell a given kind and size of flooring?

A. Firstly, the stock on hand; secondly, the competition they have to meet.

Q. That is, I take it, if a maple flooring mill has a considerable supply on hand of a given grade and size of flooring, your experience is that they will cut the price of that product down in an effort to move it?

[fol. 1019] A. Nearly always.

Q. On the other hand, if they are oversold their tendency would not be to cut their price?

A. Exactly.

Q. Their list or quoted price?

A. Yes.

Q. Have you found that the variation in maple flooring prices for a given grade and size of maple flooring has been as great as the variation in oak flooring prices for a given grade and size?

A. Yes, I think it has.

Q. In other words, you have not noticed any difference in that respect in maple flooring over oak or any of the other floorings?

A. No, I think that is perfectly true. It varies just the same as oak or any other floorings."

In selling in the New York market I have met very active competition from other large dealers and other representatives and manufacturers. That competition has always existed and has been very keen and active in maple flooring. In representing the two mills above mentioned I have found them very frequently willing to cut their prices in order to allow me to meet competition for a given job. The two manufacturers represented by me never adhere rigidly to any price unless they are oversold and have more business than

they need on that particular item. It has been my observation that the price of maple flooring has moved in line with the general supply and demand.

The standardization of maple flooring by the Maple Flooring Manufacturers Association has been very beneficial to the purchasers of maple flooring.

"Q. And in what respect, Mr. Storm?

A. Well, for example, we know that when we buy maple flooring manufactured by a member of the association that it will be well [fol. 1020] manufactured and if it is not we do not have to take it. If we purchase from outside mills we cannot be so sure about it, it may or may not be. And in purchasing we always mention the fact that it shall be association manufacture, because that protects us, sort of like a 14 karat mark on your jewelry. That is a fact. It is very, very helpful."

We frequently purchase from various manufacturers when our own mills cannot supply us, but I will tell you frankly that we do not like to purchase from any mill that is not an Association mill. We have been burned that way several times and do not like to do it. If there were no association all the different manufacturers would be making their own grades and sizes and you would not know what you were getting unless you got it all from one mill. I do not remember any case in recent years where we have had to have reinspection. At times there have been complaints but the manufacturers themselves have always come on and adjusted them. We have, however, offered our customers the reinspection service and it is usually a very convincing argument. As a whole, the reinspection service is beneficial to the trade. We buy all our flooring f. o. b. destination. There are no risks to run when we buy at a delivered price. We never think of quoting a purchaser anything but a delivered price. In our judgment the Maple Flooring Manufacturers Association has been decidedly beneficial from the standpoint of the user of the maple flooring.

Cross-examination.

By Mr. Benton:

We buy our stock outright. We buy from the two manufacturers heretofore mentioned if they can supply our needs. When they [fol. 1021] cannot we buy from other mills.

"Q. When you request the manufacturer to permit you to sell at a lower price in order to meet competition that is done, is it not, before the sale is actually made or before you make the quotation in order to meet the competition?

A. Yes, necessarily so. Of course there might be times when we would quote the list price and find the price high and then tell them of the competition and they would wire us to reduce the price.

Q. Then how would they make good the difference in your cost price, your lumber being already in stock or in New York City?

A. Oh, it is not in stock. Our stock is only kept as a reserve. Nearly every order of any size is shipped direct from the mill.

Q. Then the adjustment of the price in order to meet competition is made before the shipment arrives here, is that right?

A. Exactly, when the material is invoiced."

Redirect examination.

By Mr. Johnston:

"Usually we do not know what the competition is. If we quote a purchaser on a carload of maple flooring and we find that he has much lower prices, we are very seldom enlightened as to who made him lower prices. I know of some people here in New York that act as special representatives who have competed with us for jobs and they took them away from us at times, but I think they handled more than one mill's output, and of course I do not know from which mill they supplied the material.

Q. That is you meet the competition but you are not always able to tell the source of it?

A. No. As a matter of fact we often think we are meeting competition in supplying good material, whereas if the man buys it from the other people he would not have gotten the same material. That happens very frequently, we know."

[fol. 1023] DEPOSITION OF PAUL T. RIBETT, TAKEN, PURSUANT TO STIPULATION, AT NEW YORK CITY ON NOVEMBER 7, 1923

PAUL T. RIBETT, being duly sworn, testified as follows:

I live on Long Island and am the Manager of the Harris Flooring Company of New York City. I have been engaged in handling hardwood flooring since 1905. From 1905 to 1911 I was with the Vossnack Lumber & Veneer Company, Long Island City. In 1911 I was with Herman Vossnack, Jr. of New York City. Some time during 1911 I became associated with the Harris Flooring Company and have been with them ever since. The Harris Flooring Company handles about five million feet of flooring a year, of which possibly 500,000 feet are maple flooring. As Manager I run the business and sell flooring as well as buy it. From 1905 to 1908 I did not have anything to do with the purchasing of flooring, but I sell it. Since 1908 I have been purchasing flooring.

Our Company sells flooring to lumber dealers, carpenters, builders and floor layers. In the sale of flooring we come into competition with other dealers and I am familiar with the prices quoted by them.

We represent the Harris Manufacturing Company and we also buy from other manufacturers. Lately we have been confining our purchases of maple flooring to members of the Maple Flooring Manufacturers Association because of the uniform quality of the flooring manufactured by them. In the sale of maple flooring in

New York City there is active competition. That competition is evidenced by the various quotations of prices made on the same grade and size of maple flooring by the various manufacturers or representatives of manufacturers. In bidding for particular jobs, I have been informed by the prospective customer of the prices quoted by other manufacturers or other representatives. To my knowledge there has never been a time where all manufacturers of maple flooring were quoting a uniform price. There has been competition at all times. When we get an inquiry from anyone wanting flooring, we write direct to several manufacturers and ask them for a price on that particular grade f. o. b. destination. We buy all flooring f. o. b. destination and sell it that way. Our customers want f. o. b. delivered prices.

Your representative came to our office Monday and we got our maple flooring manufacturers file and gave it to him. You have such inquiries and quotations as were found. The letters you hand me were received in response to an inquiry that appears to have been sent out by our Company. The inquiry is not there but it seems to have been sent out shortly before the dates of the various letters.

(Said letters marked Defendants' Ribett Exhibit 1 and received in evidence.)

In response to said inquiry, which was made some time in September, 1920, we received the following quotations for the grades and sizes listed below, from the manufacturers hereinafter named, f. o. b. cars New York City.

	13/16 x 2 1/4 clear	13/16 x 2 1/4 No. 1	13/16 x 2 1/4 factory
Cobbs & Mitchell, Inc.....	195	186	.....
North Western Cooperage & Lum- ber Co.	172.50	162.50	108.50
Kerry & Hanson Flooring Co.....	171	161	104

[fol. 1025] The papers you hand me consist of inquiries sent out by us for quotations and letters received in response thereto.

(Said documents marked Defendants' Ribett Exhibit 2 and received in evidence.)

In response to said inquiries, we received from the persons hereinafter named the following quotations on the sizes and grades of flooring set forth below as follows:

	13/16 x 2 1/4 clear	13/16 x 2 1/4 #1	13/16 x 2 1/4 factory
Horner 4/9/21.....	96.00	77.00	45.00
Ward Bros. 4/8/21.....	96.75	76.75	43.75
Stephenson 4/9/21.....	101.00	84.00	49.00

All the foregoing quotations were f. o. b. New York.

The documents you hand me are copies of letters which were mailed out under the ordinary course of business on September 27,

1921 to various maple flooring manufacturers and the answers which were received in the ordinary course of business in response thereto.

(Said documents marked Defendants' Ribett Exhibit 3 and received in evidence.)

In response to our inquiry last above mentioned, we received the following quotations for maple flooring of the sizes and grades hereinafter mentioned, f. o. b. cars New York and f. o. b. cars, Vermont rate:

	13/16 x 2 1/4 clear	13/16 x 2 1/4 No. 1	13/16 x 2 1/4 factory	13/16 x 2 1/4 factory, Vermont rate
Ward Bros.	92.75	70.25	30.25	30.75
J. W. Wells	99.	69.	34.00	34.50
North Western Cooper- age & Lbr. Co.	99.	69.	32.00	32.50
W. D. Young	94.	64.	29.00	29.50
Bigelow & Cooper....	90.50	62.50	27.50	27.50

[fol. 1026] The three exhibits that have been put in evidence and the quotations contained therein are typical of the variations in prices received by us when sending out to manufacturers of maple flooring for quotations. Such variations have existed ever since I have been familiar with the purchasing end of maple flooring. It has been our experience that if a mill is long on a certain grade or a certain size, lower prices are made in order to move it.

When selling maple flooring and selling it from a member of the Maple Flooring Manufacturers Association, they have a standard by which they go by, and that standard is something that we can sell our maple flooring to our people, feeling quite certain that the maple flooring will be perfectly satisfactory; and by going to an outsider we have not that assurance; and for that reason we only want to handle the Maple Flooring Manufacturers Association material or material manufactured equal to their rules.

It has been our experience that the standardization of maple flooring has given the wholesalers of maple flooring a wider market in which to make their purchases and has increased competition. In filling a large order it has enabled us to buy the flooring from three or four or five different manufacturers and has not limited us to one. There is no question but that standardization of the flooring has been beneficial. I have not had occasion to ask for reinspection of any shipments bought by us.

The John A. Daley Lumber Company are known as dealers in maple flooring. As a matter of fact I get quotations from them sometimes *from them sometimes* on some of my inquiries. I understand that they have a direct mill connection and for that reason I get their prices.

[fol. 1027] Cross-examination.

By Mr. Thompson:

The Harris Manufacturing Company manufactures maple flooring. I should imagine that we handle about 300,000 feet a year of maple flooring manufactured by the Harris Manufacturing Company and about an equal amount of flooring manufactured by others. The Harris Manufacturing Company has its plant at Johnson City, Tennessee. We buy our maple flooring outright when we purchase from other manufacturers. What we sell we sell as our own flooring. We sell flooring both at wholesale and at retail. I understand that there are a number of wholesalers who procure orders and then turn them over to the mills for commission. They quote the prices they get from the mills and work on a commission.

In speaking of the competition which I met in New York City in the sale of maple flooring, I meant the competition that we met from other wholesalers. I do not know how many wholesalers of maple flooring there are in New York City because there are quite a number of them who wholesale lumber generally and who handle maple flooring in connection with their other business. I would say there were 30 such firms who handle lumber and flooring altogether.

I cannot say that I find competition from manufacturers who sell direct to our customers. There may be one or two cases but there are not very many.

I have no knowledge of prices quoted by manufacturers other than those that we receive from inquiries which we send out. I think that we usually send our inquiries to about eight or ten manufacturers and we limit our inquiries to members of the Maple Flooring Manufacturers Association with the exception of Ward Brothers. I don't think Ward Brothers are members.

Redirect examination.

By Mr. Johnston:

I do meet competition among wholesalers who represent manufacturers such as Daley & Company. I am in competition with Storm & Company and Sam E. Barr.

[fol. 1029] DEPOSITION OF ELMER M. PFISTERER, TAKEN, PURSUANT TO STIPULATION, AT PHILADELPHIA, PENNSYLVANIA,

ON NOVEMBER 2, 1923

ELMER M. PFISTERER, being duly sworn, testified as follows:

I live at Philadelphia and have for practically all my life—45 years. I am Sales Manager for the William M. Lloyd Company of this city. That Company has been engaged in the lumber business in Philadelphia since 1868. I have been Sales Manager for

the William M. Lloyd Company for three years. Before that I was their Traffic Manager.

As Sales Manager I purchase and sell lumber. Our Company handles Long Leaf Yellow Pine, Short Leaf Yellow Pine, Yellow Pine Floorings, Maple Flooring, Oak Floorings, White Pine, Hemlock, Spruce, practically all lumber that is used in building construction. Our Company deals in these products, both wholesale and retail. We sell principally to the lumber yards throughout the eastern portion of the United States. We also sell to builders, contractors, consumers in and around Philadelphia. During the past two years I think our Company has handled about a million feet of maple flooring a year. We purchase maple flooring from different flooring mills. During the past two years we have specialized in the product of Kneeland-Bigelow Company, formerly the Bigelow-Cooper Company. Before we began to handle the product of the Kneeland-Bigelow Company, we purchased maple flooring from various mills. We sent out inquiries addressed to several manufacturers [fol. 1030] in order to determine from whom we would buy. These inquiries were addressed to probably six or eight different mills in different sections.

The prices quoted by the different mills varied. That was always the case. The variation in prices was a matter of dollars per thousand feet. I was also then familiar with the prices of oak floorings. I think that the variations in prices quoted by the maple flooring manufacturers were as great, or greater, than the variations in prices quoted by the manufacturers of other competing flooring, such as sold. Sometimes the variations would be much greater than at others. I have known of variations of six or seven or eight dollars per thousand feet on different grades of maple flooring. In the sale of the product of the Kneeland-Bigelow Company we are constantly in competition with the product of other manufacturers. W. D. Young & Company of Bay City, Michigan and the West Michigan Flooring Company of Manistee, Michigan are represented in this territory and are the principal ones that we come into competition with. Competition is active all the time and the prices quoted by the representatives of other flooring manufacturers vary from our prices. This variance is sufficient to swing the business to or from us, according to whether our prices are lower or higher than the prices of our competitors.

To my knowledge this condition has existed all the time that we have been handling Kneeland-Bigelow flooring. I don't want to give the impression that we were always higher because there were [fol. 1031] lots of occasions when we have been equal to or lower than other quotations and received the business; maybe through friendship or through business association we received business, possibly on the same basis or maybe 25 or 50¢ higher than other quotations.

During all the time that I have been selling flooring I have found very substantial variations in the prices quoted by other manufacturers in competition for a given job. That variation is sometimes as much as four or five or six dollars per thousand feet of

flooring. The Philadelphia market is a large consumer of maple flooring, which is used in office buildings, schoolhouses and construction of that character. To my knowledge there has been a time when substantially all the manufacturers of maple flooring, either directly or indirectly, quoted uniform or practically uniform prices. As we encountered competition, we took the matter up with Kneeland-Bigelow Company.

The letters you show me are correspondence passing between our Company and the Bigelow-Cooper Company or the Kneeland-Bigelow Company. This correspondence was carried on in the ordinary course of business. The correspondence in question was taken directly from our files.

Our letter of January 27, 1922, addressed to Bigelow-Cooper Company, Bay City, Michigan, reads as follows:

"Recently I quoted John L. Conrad Sons at Port Carbon, Pa., on 10,000 ft. 4-4 Factory Maple Flooring at \$38.50, f. o. b. car their city.

"I have followed this matter very closely and received a re-[fol. 1032] sponse from them this morning (as I have a friend in their employ) stating that it was bought from Young at \$31.50 delivered."

That letter is typical of the competition between ourselves and some other manufacturer or manufacturer's representative in the sale of factory flooring. I recall the case referred to in that letter. By Young I meant W. D. Young & Company of Bay City.

The letter of March 6, 1922, written by the Bigelow-Cooper Company to our Company, reads as follows:

"You understand of course that we have discontinued the operation of our plant and do not intend to resume operations until conditions are stabilized to a point where we can pay the present market prices for rough lumber and sell our flooring at a profit.

"Our supply of flooring lumber was reduced to a very low point and we realize it would be necessary for us to go out on the market and replenish our stock. When we learned the market price on lumber and compared the prices for the finished product, together with our cost of operation, we promptly discovered that figures were in the red."

The letter written by the Bigelow-Cooper Company addressed to our Company, under date of March 14, 1922, reads in part as follows:

"We have a great deal of confidence in the future, however, and feel that the extensive proposed building program throughout the country will improve values, while, on the other hand, the crop of rough lumber produced during the past winter will soon be ready for the market and there is a possibility that prices on the rough lumber will be lower. With this in view we are anxious to have our house in order so that it will be possible to take advantage of the conditions and operate our plant to full capacity.

"On our last price list we made concessions on certain items which we believe represent the present market, but in any instance where you are offered business for these items at prices lower than our list, we will allow you to meet legitimate competition, in order to secure the business.

"We fully appreciate your position under these conditions and as [fol. 1033] sure you it is our desire to cooperate to the fullest extent possible without serious loss to ourselves, and we are confident that you do not expect any more than this. Of course we want you to handle our stock exclusively, but there is absolutely no objection to your purchasing elsewhere items that we cannot furnish, or that it is possible for you to buy to better advantage."

When we met active competition and lower prices quoted than we were able to meet, we usually submitted the matter to Kneeland-Bigelow Company. Sometimes they would authorize us to take the business at lower prices and sometimes they would not. We usually have specific cases which we submitted to them where the business had been offered to us and before we would accept we would naturally get in touch with the mill and get their acceptance. Of course, we were always authorized to accept business at the prices fixed in Kneeland-Bigelow Company's current price list. What we took up with them was whether we could accept certain specific orders at less than the prices stated in their current price lists. It was the practice of the Kneeland-Bigelow Company, as well as the practice of other manufacturers, to send out their price lists from time to time. That is true of the lumber trade generally. Price lists of some character are received in almost every mail. On July 6, 1922 we received a letter from the Bigelow-Cooper Company calling attention to the stocks on hand in various sizes, etc. Said letter reads in part as follows:

"We have made concessions in prices on these items and believe they are considerably below the present market; therefore we urge you to call the attention of your trade to these particular items.

"We would appreciate an expression from you regarding the conditions [fol. 1034] in your market in reference to prices and the prospective future demand. It is essential that we have all of the information possible so that we may keep in line with our competitors and plan our future policy."

It was our practice from time to time to advise the Kneeland-Bigelow Company of the competitive conditions in this market. It was our intention to keep said Company fully informed as to what their competitors were doing because our getting orders depended always upon being in line with the market, or being able to at least equal or undersell other dealers.

On August 9, 1922 we received a stock list and prices from the Bigelow-Cooper Company, accompanied by a letter which reads in part as follows:

"We have endeavored to make prices on these items that are attractive, but are perfectly willing to meet legitimate competition

from reputable Maple Flooring manufacturers, if necessary to secure orders."

"We will welcome any information that you can give us regarding conditions in your territory, especially with reference to competitive prices, and also any suggestions which you may have to offer that will lead to our mutual benefit in the distribution of our products."

When a manufacturer has a considerable quantity of given grades and sizes of maple flooring on hand, the usual procedure is to make a special effort to move those sizes at the list price, if possible, and if not, of course, at lower prices. A flooring mill has to have a continual flow through the mill. Otherwise, if the warehouse becomes filled with maple flooring, the mill portion must stop. If is of such a character that you cannot pile it outside. It must be protected all the way through the manufacture, and then it must be kept in the warehouse until it is loaded on cars and shipped out. [fol. 1035] Consequently there must be that even flow through the warehouse continually, and if they cannot sell a certain size of certain dimensions, or a certain grade, that piles up, and it is produced all the time in the manufacture of the other grades, that is you cannot stop it, it comes on continuously, then that flooring must be moved out of that warehouse. All different grades and sizes are and must be produced at the same time. It has been our experience that when a manufacturer becomes stocked up on one particular grade, he cuts the price.

We received a letter from the Bigelow-Cooper Company dated August 23, 1922, reading as follows:

"We desire to again call your attention to the surplus items on our list, and urge you to make a more earnest effort to secure orders for this stock. We are especially anxious to move some of the shorts.

"If you find that our prices on this item are not in line with our competitors, it will be satisfactory for you to meet the market price. Our weekly sales reports show that other manufacturers are selling the short lengths, and we see no reason why it should not be possible for you to secure a portion of this business."

On January 24, 1923, we sent a letter to the Kneeland-Bigelow Company, reading as follows:

"Will you be kind enough to let me know what information you have regarding Wisconsin Land and Lumber Company, as these people were in competition with us with a contract of this city on 200,000 feet 13-16 x 2-1.2" #1 Maple Flooring, on which they quoted \$92.00 per thousand feet.

"I understand they manufacture the IXL brand, and inasmuch as their price is \$.75 lower than yours I did not think it advisable to wire you the offer as you do not show any of this grade on your stock list."

We received from time to time stock lists, as well as price lists, from the Kneeland-Bigelow Company. We had those stock lists in order [fol. 1036] that we might know just what to sell and what not to sell.

On April 17, 1923 we wrote to the Kneeland-Bigelow Company a letter, reading in part as follows:

"For your information, we understand that Ward is willing to take on the business, shipping as outlined, and their price is 50 cents under ours, but we can secure the business on our price."

The business referred to was 102,000 feet of 13/16 x 2 1/4" clear maple flooring. The Ward mentioned in said letter is Ward Brothers of Michigan. I do not know whether Ward Brothers are members of the Maple Flooring Manufacturers Association.

In Philadelphia we sell to contractors and consumers and come in competition with yard men and other dealers who handle maple flooring of other manufacturers. Outside of Philadelphia we have a wholesale business, and in such business we come in competition with other manufacturers in the sale of maple flooring.

We received a letter from the Kneeland-Bigelow Company dated May 3, 1923, reading in part as follows:

"We are surprised to note that you are losing business on lower competitive prices, as other mills report that they are receiving orders at higher prices than our list. As a matter of fact, we have acted very conservatively in raising prices and it was our conviction that it was advisable for us to accept orders for shipment during the third quarter of this year, which you know has not been our policy theretofore.

"The instance you report on Factory Maple Flooring may be unusual in some respects as, of course, in this grade we have competition from various sections of the country.

"We are very glad to have you keep us advised of competitive conditions that you have to contend with and assure you that it is our desire to co-operate with you to the fullest extent possible in order to increase the business."

[fol. 1037] We received a letter dated June 18, 1923 from the Kneeland-Bigelow Company, reading in part as follows:

"We have been advised in several instances that some manufacturers of Maple Flooring are offering reductions in certain items. It is our desire to keep in line with the market in order to secure a fair share of the business offered.

"We desire to co-operate with you on future orders and in any cases that you encounter lower prices, we would appreciate it if you would inform us by wire and we will immediately give you definite response."

We also received the letter dated June 3, 1923 from the Kneeland-Bigelow Company, reading as follows:

"Referring to our stock list of June 15th, we call your attention to the surplus of 17-16 by 3-1.4" face Factory.

"In order to secure prompt orders for this stock, we will allow a special concession of \$2.50 per M to you for the entire quantity shown on our list."

We also received the letter dated June 27, 1923 from the Kneeland-Bigelow Company, reading in part as follows:

"We have your favor of the 25th inst. with reference to quotations in your territory and since this letter was written, we have mailed you new price lists with reductions on a great many items. This now makes our price on the 13-16 by 2-1.4" face Factory \$57.75 delivered your rate. You realize, of course, that we have been heavily oversold and consequently have hesitated in reducing our prices. However, we wish to keep in line with the market, and as previously advised you, it is necessary for us to depend upon our representatives to keep us informed of the competitive price conditions."

The letters which have been introduced in evidence are typical of the correspondence that has passed between our Company and the Kneeland-Bigelow or the Bigelow-Cooper Company. The competitive conditions described in said letters have at all times existed in the flooring business in the Philadelphia market. We buy all our flooring f. o. b. destination. We prefer to buy in that way [fol. 1038] simply because it establishes a definite price at the point where the flooring is to be resold or is to be used. We do not have to accumulate all the freight, and further than that, if there is any trouble arising on account of wrong consignment, naturally it is up to the mill to handle all those cases. We do not have to put in claims or have that trouble to go through which naturally we would if we bought f. o. b. mill, because our responsibility then would start at the mill instead of starting at the destination.

We never experience any difficulty in getting f. o. b. mill prices. We get f. o. b. mill prices on which we base our shipments of less than carload lots. Standardization of flooring is of benefit to all concerned. That benefit would be to the consumer in the appearance of the flooring after it has been put down. It would also, I should think, be a basis on which you could judge the prices that the different mills were asking for that particular grade of flooring. If you had a standard grade of flooring, called clear, then, if they were manufacturing under that standard, then the difference in the price would be of advantage, but if the one manufacture was excellent and the other manufacture was poor, the lower price might be a high price in the long run and at the end of the sale. In the absence of standardization, there is no real basis for the comparison of prices.

We carry a representative stock of maple flooring of different thicknesses in the warehouse at Philadelphia. At the present time the variation in the prices of maple flooring quoted by the different [fol. 1039] manufacturers is as great as the variation in the prices on other flooring.

(Certain papers were marked Defendants' Philadelphia Exhibits Nos. 1 to 8 inclusive, Nov. 22, 1923, JCW.)

Referring to Defendants' Exhibit 1 for identification, the first sheet of said Exhibit being apparently a price list under date of April 10, 1922, sent out by the Kneeland-Bigelow Company or the Bigelow-Cooper Company, I will state that that list was obtained from our files and was received from the Kneeland-Bigelow or the Bigelow-Cooper Company. That is a list we used to quote prices from to our customers. There is no deduction from said list so far as the customer is concerned, nor is there any deduction for commission. If there is a commission that goes to us as the selling agent. The usual commission is \$2.00 per thousand feet.

For purposes of comparison, the prices named on the first sheet of said Exhibit No. 1 for identification are the prices quoted by us to customers.

The second sheet of Defendants' Philadelphia Exhibit 4 for identification was obtained from our files and is a price list. We received said list from the Bigelow-Cooper Company or the Kneeland-Bigelow Company, and the price list is dated September 1, 1922. That list was used by us in quoting prices to our customers.

The second sheet of Defendants' Philadelphia Exhibit 5 for identification is an original price list received from the Kneeland-Bigelow Company and was used by us in quoting prices to our customers. [fol. 1040] The price list last mentioned was issued on October 1, 1922 and was received by us on October 6, 1922. All the prices shown upon the foregoing lists and the other Bigelow lists are prices f. o. b. cars Philadelphia.

The first sheet of Defendants' Philadelphia Exhibit No. 6 for identification is an original price list received by us from the Bigelow-Cooper Company under date of January 27, 1923, and said list was used by us in quoting to our customers. This list was obtained from our files and received by us in the ordinary course of business. The prices are f. o. b. cars Philadelphia.

The second sheet of Defendants' Philadelphia Exhibit 7 for identification is a copy of the same list that has been marked Exhibit 6.

Defendants' Exhibit No. 9 for identification is a pricelist issued by the Bigelow people under date of June 25, 1923 and was received by us on June 28, 1923. The prices were f. o. b. Philadelphia rate of freight and the list was used by us for quoting prices to our customers. Said list was taken from our files.

Cross-examination.

By Mr. Benton:

We sell Kneeland-Bigelow Company's flooring exclusively and are their exclusive agents in Philadelphia. We buy our flooring from them outright. We do not buy from others unless we cannot get the flooring from the Kneeland-Bigelow Company. Where we asked for permission to take on business at prices lower than those fixed by the Kneeland-Bigelow Company, we did so because if we

accepted the business at prices lower than those fixed by the Kneeland-Bigelow Company we would have to sustain a loss. Of course, where we had bought flooring and had it in our warehouse, we could sell it at any price we pleased. We took up the matter of lower prices with the Bigelow-Cooper or the Kneeland-Bigelow Company previous to our accepting orders for specific lots. We did that in order to ascertain whether either of those companies wanted to accept orders at specified prices. We do not fill all our orders from stock we carry in our warehouse. On direct shipments from the Kneeland-Bigelow Company to persons designated by us, we do not quote prices lower than those which are specified by the Kneeland-Bigelow Company. On our stock carried in Philadelphia, we sell at any prices we please. When we sell to lumber yards in different states, we either sell at the prices designated by the Kneeland-Bigelow Company or take up with said Company the question whether they are willing to accept certain prices in order that we may make a contract with the buyer. The only purpose of our taking up with that Company the matter of price is to find out whether they are willing to accept an order at a specified price, otherwise if we should take the order and then have to purchase flooring from the Bigelow people at a higher price, we would lose money. If that Company reduces their price to meet competition then we are able to handle the order and make a profit. Our profit consists of \$2.00 a thousand feet commission.

I do not know what manufacturers of maple, beech and birch flooring belong to the Maple Flooring Manufacturers Association. My knowledge of competitive prices reaches me through our retail and country salesmen. My statement as to variations in price of [fol. 1042] maple flooring are based upon conditions both prior and subsequent to March, 1923, including present conditions. I would not want to make the statement that there is more competition now than there was prior to March, 1923 because there always has been competition to my knowledge. Where there is a great amount of flooring and the capacity of the mills is practically taxed to the utmost, you would not find the competition that would exist under conditions where building construction is restricted and there is not much maple flooring used. Building construction has been practically restricted recently. Competition in flooring is just like business in everything else. If you have a loaf of bread to feed to twelve children, they are all after it. If you have a dozen loaves of bread there isn't that eagerness to get their portion. In other words, the intensity of the competition depends largely upon the general state of the market.

I said that a difference of \$7.00 a thousand feet is not unusual. That difference exists in the selling price to the purchaser. I purchased all the maple flooring used by our company until quite recently; that is, until about March, 1923.

The correspondence with the Bigelow people was quite voluminous and I did not bring all of it. That which has been introduced in evidence would be a small percentage of it.

Redirect examination.

By Mr. Johnston:

When carload lots are sold by us, all that we can get is our commission. If we find that our prices are high and competitors are [fol. 1043] quoting less, we take the matter up with the Bigelow people and ask whether they can't let us have the flooring at less. It isn't so much what we sell the flooring at as what we can buy it at from the Bigelow people. Unless we know what we can get the flooring at from the Kneeland-Bigelow Company, we cannot tell at what price we can afford to sell it to the purchaser, and it is for that reason alone that we communicate with the Kneeland-Bigelow Company in order to find out whether they will cut their price or lower their price to us in order to meet the competition that we find here.

[fol. 1044] DEPOSITION OF W. J. BARNETT, TAKEN, PURSUANT TO STIPULATION, AT PHILADELPHIA, PENNSYLVANIA, ON FEBRUARY 2, 1923.

W. J. BARNETT, being duly sworn, testified as follows:

Direct examination.

By Mr. Johnston:

I live at 1624 Lindley Avenue, Philadelphia and am connected with Watson, Malone & Sons, Philadelphia, who have been in the lumber business since 1854. We handle long leaf pine, short leaf pine, maple flooring, building lumber generally, yellow pine flooring, etc. I do most of the buying for our firm and have been for about seven years. I also do selling. Our Company handles from 800,000 to a million feet of maple flooring a year. We sell to building contractors in and around Philadelphia. In the sale of flooring and other lumber products, we meet the competition of approximately ten dealers here in Philadelphia. We carry flooring in stock and on large orders we buy from the manufacturer and make deliveries through him.

In selling flooring, my experience has been that when a contractor is in the market he will send out an inquiry to about six different dealers, and if we get such an inquiry we send out an inquiry to three or four manufacturers in the west and some wholesalers here who are representing flooring manufacturers. There is considerable variation in the prices quoted by us and our competitors. There is active competition in the Philadelphia market and has been ever since I have been familiar with the sale of flooring. That competition is represented by substantial variations in the prices quoted, both [fol. 1045] to the dealers here in Philadelphia by the manufacturers or their representatives and in the prices which our Company and their competitors quote to the contractors. I should say that in the

better grades of flooring, like Clear, the variation would be \$2.00 to \$5.00 a thousand feet. The cheaper grades of flooring do not vary so much.

The variation in prices depends upon general conditions. When we have a large contract in prospect we send out inquiries. Most of them are sent to the Strable Lumber & Salt Company at Saginaw, Michigan and W. D. Young & Company at Bay City. We also use the telephone to a couple of wholesalers here such as Sam E. Barr of New York City, who has a branch office in Philadelphia, and the Lawton Flooring & Shingle Company of Philadelphia.

When we buy flooring from Mr. Lawton, we don't know from what mill the flooring is coming. I think he did represent the West Michigan Flooring Company. On one or two occasions we have made inquiries of Mr. Lippincott. He is a wholesaler or representative of wholesalers. We have also had correspondence with Charles Horn of Chicago and have bought some flooring from him, but not much. We have also had correspondence with John Little of Philadelphia and I think during the last year we bought some flooring from Kerry & Hansen Flooring Company. We have also sent inquiries to William Horner, or the Grand Rapids Trust Company as Receiver for William Horner.

The persons and firms above mentioned are those to whom we usually send inquiries. When we inquire of persons located here in [fol. 1046] Philadelphia, we get quotations by telephone. A record is made of these quotations, sometimes they are confirmed later and sometimes not.

In asking for quotations by phone, we have a copy of the inquiry sheets of the contractor before us and when prices are quoted, or when we get prices by mail or wire, we will list the prices on the inquiry sheet. Should we close the business, we place the order with the lowest competitor and then that sheet is filed away under the contractor's name.

At your request I have gone through our files for the last two years and have assembled inquiries and the quotations that we have received on various lots of maple flooring. I have also tabulated the various quotations that we received. I went right through the inquiries and assembled all of them. I may have missed some. I endeavored to get every one and also every file that we had any record of. The tabulations have been correctly set down.

On January 25, 1922 we sent an inquiry to the Strable Lumber & Salt Company, to W. D. Young & Company and William Horner. We asked for prices on $1\frac{1}{4} \times 2\frac{1}{4}$ " face Factory Maple flooring, and in response thereto we received the following quotations:

Strable Lumber & Salt Co.....	\$36.50 per M
W. D. Young & Co.....	36.50 " "
William Horner.....	27.00 " "

On January 27, 1922 we sent an inquiry to the Strable Lumber & Salt Co. and William Horner for quotations on $1\frac{1}{4} \times 2\frac{1}{4}$ " face No. 1 maple flooring and $1\frac{1}{4} \times 2\frac{1}{4}$ " face Factory maple flooring. We

did not send an inquiry on that date to W. D. Young & Company. It may be that we knew Young's condition at that time and did not [fol. 1047] want to send an inquiry to him. The quotations that we received on the $1\frac{1}{4}$ x $2\frac{1}{4}$ " face No. 1 maple flooring were as follows:

Strable Lumber & Salt Co.....	\$81.50
William Horner.....	75.00

The quotations that we received on the $1\frac{1}{4}$ x $2\frac{1}{4}$ " face Factory maple flooring were as follows:

Strable Lumber & Salt Co.....	\$36.50
William Horner.....	27.00

All prices that have heretofore been given were per thousand feet f. o. b. cars Philadelphia.

On April 22, 1922 we sent an inquiry to the Strable Lumber & Salt Co., W. D. Young & Co. and William Horner for prices on $13/16$ x $2\frac{1}{4}$ " face No. 1 maple flooring and received the following quotations:

Strable Lumber & Salt Co.....	\$75.50
W. D. Young & Co.....	76.50
William Horner.....	76.50

On April 27, 1922 we sent an inquiry to Strable, Young & Horner for quotations on $13/16$ x 2" face Clear, No. 1 and Factory maple flooring. On the Clear we received the following quotations:

Strable	\$92.50
Young	93.50
Horner	91.50

On the No. 1 we received the following quotations:

Strable	\$72.50
Young	73.50
Horner	69.50

On the Factory grade we received the following quotations:

Strable	\$23.50
Young	29.50
Horner	28.50

[fol. 1048] On the inquiries last above mentioned, we also asked for prices on the $13/16$ x $2\frac{1}{4}$ " face Clear, No. 1 and Factory.

On the Clear we received the following quotations:

Strable	\$95.50
Young	96.50
Horner	96.50

On the No. 1 we received the following quotations:

Strable	\$75.50
Young	76.50
Horner	76.50

On the Factory grade we received the following quotations:

Strable	\$25.50
Young	31.50
Horner	31.50

We also inquired for prices on 13/16 x 3¼" face Clear, No. 1 and Factory.

On the Clear we received the following quotations:

Strable	\$90.50
Young	87.75
Horner	91.50

On the No. 1 we received the following quotations:

Strable	\$75.50
Young	72.75
Horner	73.00

On the Factory we received the following quotations:

Strable	\$27.50
Young	37.75
Horner	37.00

On the 1¼ x 2¼" face Clear, Strable quoted \$96.50. Young did not quote and Horner quoted \$101.50.

On the 1¼ x 2¼" face No. 1, we received the following quotations:

Strable	\$81.50
Horner	86.50
Young did not quote.	

[fol. 1049] On the 1¼ x 2¼" face Factory maple flooring, we received the following quotations:

Strable	\$36.50
Horner	36.50
Young not quoting.	

On the 1¼ x 3¼" face Clear maple flooring, we received the following quotations:

Strable	\$92.75
Horner	97.00
Young not quoting.	

On the $1\frac{1}{4} \times 3\frac{1}{4}$ " face No. 1 maple flooring, we received the following quotations:

Strable	\$82.75
Horner	87.00

On the $1\frac{1}{4} \times 3\frac{1}{4}$ " face Factory maple flooring, we received the following quotations:

Strable	\$42.75
Horner	42.00

All the foregoing quotations were given us in response to one inquiry and are all quotations that we have any record of. I may have received oral quotations from Philadelphia representatives or wholesalers, but I would not now know where to find any record of any such quotations.

On May 11, 1922 we inquired for prices on $1\frac{1}{4} \times 3\frac{1}{4}$ " No. 1 maple flooring from Strable, Young and Horner and in response thereto received the following quotations:

Strable	\$77.75
Young	82.75
Horner	87.50

On May 29, 1922 we sent out an inquiry for quotations on $1 \times 2\frac{1}{4}$ " face No. 1 maple flooring to Strable and Young and received the following quotations:

Strable	\$81.50
Young	86.50

[fol. 1050] We also inquired for prices and received quotations on $1" \times 2\frac{1}{4}"$ face Factory maple flooring, both Strable and Young quoting \$36.50.

On June 2, 1922 we sent out inquiries to Strable, Young & Horner on $1" \times 2\frac{1}{4}"$ face *flooring* maple flooring and received the following quotations:

Strable	\$96.50
Young	101.50
Horner	96.50

On June 7, 1922 we sent inquiries to Strable, Young and Horner and Charles Horn of Chicago for quotations on $1\frac{1}{4} \times 2\frac{1}{4}"$ face Clear maple flooring and received the following quotations:

Strable	\$102.00
Young	111.50
Charles Horn	100.00
Horner could not quote.	

On June 7, 1922 we sent out an inquiry for 13/16 x 2¼" face Clear maple flooring to Strable, Young and Horner and received the following quotations:

Strable	\$96.50
Young	96.50
Horner	96.00

At the same time we sent out an inquiry on 13/16 x 2¼" face No. 1 maple flooring and received the following quotations:

Strable	\$86.50
Young	86.50
Horner	86.00

On September 29, 1922 we sent out an inquiry *an inquiry* and in response thereto received the following quotations:

13/16 x 2¼" face Clear maple flooring:

Strable	\$100.75
Young	100.75

[fol. 1051] On 13/16 x 2¼" face No. 1 maple flooring, we received the following quotations:

Strable	\$90.75
Young	90.75

On October 13, 1922 we sent out an inquiry for prices on 13/16 x 2¼" face Clear maple flooring and received the following quotations:

Strable	\$100.75
Young	100.75

On November 18, 1922 we sent out an inquiry for prices on 13/16 x 2¼" Clear maple flooring and in response thereto received the following quotations:

Strable	\$100.00
Charles Horn	100.50

On January 10, 1923 we sent out an inquiry for prices on 13/16 x 2¼" Clear maple flooring to W. D. Young & Co. and George E. Lippincott and received the following quotations:

Young	\$100.75
George E. Lippincott	107.50

On March 29, 1923 we sent out an inquiry addressed to Strable Lumber & Salt Co., W. D. Young & Co. and Sam E. Barr, and in response thereto received the following quotations:

On 1¼ x 2¼" face Clear maple flooring:

Strable	\$110.75
Young	115.75

On $1\frac{1}{4}$ x $2\frac{1}{4}$ " face No. 1 maple flooring, we received the following quotations:

Strable	\$105.75
Young	105.75
Sam Barr	106.00

[fol. 1052] On March 29, 1923 we also sent out another inquiry on $13/16$ x $2\frac{1}{4}$ " face Factory maple flooring to Strable, Lawton Flooring & Shingle Co. and Sam E. Barr and received the following quotations:

Strable	\$55.75
Lawton	56.50
Barr	54.00

On March 26, 1923 we sent out an inquiry for prices $1\frac{1}{4}$ x $2\frac{1}{4}$ " face No. 1 maple flooring to Strable Lumber & Salt Co. and Sam E. Barr, and in response thereto received the following quotations:

Strable	\$105.75
Barr	102.57

On August 9, 1923 we sent out an inquiry to Strable and Lawton Flooring & Shingle Co. for prices on 1 " x $2\frac{1}{4}$ " face Factory maple flooring and received the following quotations:

Strable	\$55.75
Lawton	53.00

On August 15, 1923 we sent out an inquiry to Strable and Young for prices on $1\frac{1}{4}$ x $2\frac{1}{4}$ " face No. 1 maple flooring and received the following quotations:

Strable	\$100.75
Young	95.75

On September 11, 1923 we sent out an inquiry for quotations on 1 " x $2\frac{1}{4}$ " face Factory maple flooring to Strable, Young and Barr and received the following quotations:

Strable	\$53.00
Young	55.75
Barr	53.00

[fol. 1053] On October 12, 1923 we sent out an inquiry for prices on $13/16$ x $2\frac{1}{4}$ " face Clear maple flooring to Strable, Young and Barr and received the following quotations:

Strable	\$100.00
Young	98.00
Barr	97.00

At the same time we sent out an inquiry for prices on 13/16 x 2¼" face No. 1 maple flooring and received the following quotations:

Strable	\$90.00
Young	88.00
Barr	87.00

At the same time we sent out an inquiry for prices on 13/16 x 2¼" Factory maple flooring and received the following quotations:

Strable	\$53.00
Young	50.75
Barr	50.00

At the same time we sent out an inquiry for prices on 1¼ x 2¼" face No. 1 maple flooring and received the following quotations:

Strable	\$93.00
Young	98.00
Barr not quoting.	

At the same time we sent out an inquiry for prices on 1¼ x 2¼" face Factory maple flooring and received the following quotations:

Strable	\$53.00
Young	50.75
Barr	50.00

[fol. 1054] The quotations that I have above given were actually received by Watson, Malone & Sons. I have had occasion to observe the effect of standardization of flooring. The one big advantage to us is that we can buy from the cheapest man as long as the grades and machine work are standardized and we can carry more maple flooring in the same space because there is no danger in mixing flooring from different manufacturers. When the flooring is standardized the flooring received from different manufacturers does not have to be kept separate. Furthermore, should we take a job that would require a large amount of maple flooring, if one manufacturer could not supply flooring for the whole job, the fact that the grades are uniform and the machine work is the same would allow us to buy from several manufacturers and know that there would be no trouble at the job on account of the flooring. From the standpoint of the ultimate consumer I think that the standardization of flooring is a distinct advantage both with respect to quality and with respect to price. We have always found a variation in the prices of different manufacturers of maple flooring. There never was a time when all the prices were identically the same. The variations that appear in the quotations heretofore put in evidence are fairly representative of my experience. These variations range all the way from 50 cents a thousand to \$6.00, \$7.00 or \$8.00 on the higher grade. When

there is no demand for maple flooring, in other words, when it is a buyer's market rather than a seller's market, there is always a great variation in price. When there is a slump in the market the manufacturer and the wholesaler go as low as possible, and when there is an active demand they see how much they can get. That is the way it strikes me. I think that the prices of maple flooring have fluctuated in accordance with the laws of supply and demand. I [fol. 1055] do not think that the situation with respect to flooring has differed in any respect whatsoever from the situation with respect to other floorings and lumber products. I should say that the fluctuation in prices of maple flooring have been greater than the fluctuation in prices of yellow pine flooring. We do not handle oak flooring. I have paid from \$36.50 for Factory maple flooring in October to as high as \$55.75 and \$50.75 a year later. I think the variation in prices for maple flooring is about the same as the variation in prices of yellow pine flooring. In each of the two floorings there have been considerable variations in the prices asked by different producers at the same time. I observed nothing which would distinguish the maple flooring industry in that respect from any other of the flooring industries.

Cross-examination.

By Mr. Benton:

I do not know who the members of the Maple Flooring Manufacturers Association are. I know that in some cases the manufacturers from whom we have received quotations were members of said Association. I do not know positively whether W. D. Young & Company, William Horner and Strable Lumber & Salt Company or any of them are members of said Association. There is practically no beech or birch flooring used in Philadelphia. All my statements with respect to competition, etc., applied only to maple flooring. I should say that in the last two or three years the variation in prices quoted by different manufacturers has been from 50 cents to \$5.00 per thousand. The reason why we did not send out more inquiries than we did is that we know the product of those manufacturers better than we do the others. We have been using their [fol. 1056] product for a long time and we send out inquiries to them because they have always been fair to us and treated us fine. Another reason why we did not send out more inquiries is that some other manufacturers have agents here. We went right through our files for 1922 and 1923 and tried to get all inquiries and quotations that related to maple flooring. I could not say how the variations of the quotations during 1922 and 1923 would compare with the variations during 1920 and 1921. I could not answer that question without going over my files for 1920 and 1921.

Redirect examination.

By Mr. Johnston:

The only reason that I selected the quotations for 1922 and 1923 was because I did not have any more time to make the search for preceding years. I could not tell the variation during 1921 and 1920 in dollars and cents, but I do know that there were variations. There have always been variations in the prices quoted for maple flooring by different manufacturers.

[fol. 1057] DEPOSITION OF GEORGE E. LIPPINCOTT, TAKEN, PURSUANT TO STIPULATION, AT PHILADELPHIA, PENNSYLVANIA, ON NOVEMBER 2D, 1923

GEORGE E. LIPPINCOTT, being duly sworn, testified as follows:

Direct examination.

By Mr. Johnston:

I live at Germantown, Philadelphia. I am engaged in the wholesale lumber business. I have been engaged in business in Philadelphia for 20 years. Before that I was president of the William M. Lloyd Company. We always specialized in maple flooring, but not exclusively. We sold white pine, spruce, hemlock, yellow pine. We sold yellow pine flooring in addition to maple flooring. Last year I bought and sold over a million feet of maple flooring. That is representative of a year's business. I sell about that much every year. I sold it to retail yards in Philadelphia. I get flooring that I sell from William Horner. Before June 1st, 1923, William Horner had plants located at Reed City and Newberry, Michigan. On June 1st, 1923, the Grand Rapids Trust Company as Receiver of William Horner sold the Newberry plant to the Indiana Flooring Company. I purchase outright the flooring I get from Horner and get a commission of \$2.00 a thousand on all that I buy. That is the usual and customary commission paid to wholesalers. Since I have been representing Horner I also sell to other wholesalers in Philadelphia and allow them a commission. I have been selling William Horner's flooring for a good while in Philadelphia, since some time prior to the war. My father always handled William Horner's flooring and years ago represented Mitchell Brothers. I have always been in [fol. 1058] quite close touch with the prices of maple flooring. The persons to whom I have tried to sell flooring have often told me the prices that were quoted by my competitors. We also have received price lists and other data from other manufacturers. In the sale of maple flooring in the Philadelphia market I have always met competition from manufacturers other than those I represented or the representatives of other manufacturers. I should say that the competition was very active and intense, possibly more so than any

other line of lumber. That competition has manifested itself by variation in prices quoted. Those variations have been quite substantial. I cannot give you exactly the range in years past, but I can give you the range on a particular item today, which is indicative of what the range has always been. The prices being quoted on 13/16 x 2¼ inch face factory maple flooring today range from \$50.00 to \$61.00. There has not always been such a wide spread, but at various times there has been. I have never known a time when for any period the prices of flooring were uniform for the same grade and quality of flooring. I have never known a time when in the maple flooring trade in Philadelphia there was a lack of competition between the manufacturers of maple flooring. In my experience competition has always been very keen in maple flooring. There always have been quotations for the same grade and quality of flooring which varied substantially. My opinion as to the prices asked by other manufacturers of maple flooring is derived from quotations I have seen in the hands of retail dealers whom I have endeavored to sell and from price lists sent me by manufacturers. There are also other wholesalers in Philadelphia with whom I come in contact and I receive quotations from them. In times past I have come in competition with these other wholesalers and at other [fol. 1059] times I have sold them flooring. Sometimes my prices have been higher than others and sometimes theirs have been higher.

"Q. What has been your practice since you have been representing William Horner in cases where you have a prospect for the sale of a quantity of maple flooring and the last quotation furnished you by William Horner, either on his published price lists or direct quotation, is higher than the price which is being offered by your competitors?

A. I have wired Horner, asking him if he will meet the price that I will have to sell it at to get business.

Q. What would Horner reply to such wires?

A. It would depend largely whether Horner was long, that is, had a large quantity on hand of the article inquired for. Often if that was the situation, without my wiring him, he would ask me, either by letter or wire, what price it would take to move the item he was long on.

Q. By "long," you mean he had a considerable supply in his factory of that given grade and quality of flooring?

A. In his warehouse unsold, yes.

Q. Have you found from your experience in the maple flooring market that the condition of the supply and demand of the product has been the material factor in determining the price?

A. Very much so, particularly if a mill is long on a certain item.

Q. When they are long on that item, or certain items, what do you find to be the tendency then?

A. They make a price on it which they think will move it.

[fol. 1060] Q. Cutting below the price—

A. Which they have previously quoted, yes.

Q. Has Mr. Horner sometimes given you discretion to sell the product?

A. I have felt that I have always had in my dealings with William Horner more or less discretion as to price. I have not abused that, what I might call privilege, because I use judgment in noting what he was long on and what he was short on in the various stock lists which he supplies me with every Monday.

Q. By stock lists you mean lists showing the stock of lumber of the various qualities and sizes of maple flooring which he had on hand?

A. Yes.

Q. You have done that in cases where your judgment dictated that that was the best thing to do in order to meet competition?

A. I have done it always, yes. Possibly my connection in that respect was more or less unique because of the discretion which Horner vested in me to do that. I have always felt that it *it* was necessary, without taking it up with him I could cut the price at least fifty cents per thousand feet.

Q. You have very frequently found it was necessary to cut the price, sometimes quite substantially, in order to meet competition with other mills, have you not?

A. Yes.

Q. Who are your principal competitors? I mean by that the flooring mills that are your principal competitors in this field.

[fol. 1061] A. Ward Brothers.

Q. Where are they located?

A. I think Luddington, Michigan.

Q. They are not members of the Maple Flooring Manufacturers Association?

A. I believe they are not.

Q. Who else?

A. Kneeland-Bigelow, through their representatives. I think they changed their name; the West Michigan Flooring Company, through their representatives; Cobbs & Mitchell, and W. D. Young and Company.

Q. Do you recall any others?

A. Those are the most prominent ones. You always run across others, as I do not think there is a single mill that does not try to get maple flooring business in Philadelphia. It is known as a maple flooring market.

Q. There is a very large market here for maple flooring?

A. Yes.

Q. And it has been your experience that practically all of the manufacturers of maple flooring try to sell in this market?

A. Yes.

Q. Does the Strable Company sell here?

A. Yes. I have to compete with them here.

Q. How about Nichols and Cox Lumber Company?

A. I have to compete with them here, not as much so as some others, because Nichols and Cox are usually high in price.

Q. Somewhat higher than the average?

A. Yes.

[fol. 1062] Q. In meeting that competition in the Philadelphia

field, and competition from others from time to time, you have found it frequently necessary to lower the prices which you are asking?

A. Yes, I have.

Q. Bringing it down below or to the level of the competitor who had the lowest price?

A. Yes.

Q. And have you found in the prices which your competitors were asking for the same quality and grade of maple flooring, a variation among those competitors in their prices?

A. Yes.

Q. That condition has existed all the time you have been in the maple flooring business, has it not?

A. Yes.

Q. And there has been no period of time when the situation was substantially different from that?

A. No.

Q. I mean by that there has been no time when there has been an absence of competition and there has been a uniformity of price?

A. No, there never has been a time, because not only are the Michigan mills endeavoring to sell here, but also maple flooring mills in West Virginia.

Q. Do you have in Philadelphia quite active competition with the West Virginia maple?

A. Very.

Q. And a considerable quantity of West Virginia maple flooring [fol. 1063] is sold in this territory, is it not?

A. I wouldn't say a considerable quantity, because there are not many mills in West Virginia, but they usually are cheaper than the average run of the different mills in Michigan. Their product is considered inferior.

Q. But they do compete with you on these various jobs?

A. Yes.

Q. I will hand you this file containing several letters from William Horner, addressed to you, and ask you whether or not those letters were received by you in the regular course of your business?

A. These letters were all addressed to me by William Horner and were received by me.

Mr. Johnston: I desire to offer in evidence and read into the record a portion of these letters, that portion which refers to the question of price, with leave to the government to include any of the balance, if they so desire.

The first letter is dated July 1st, 1922, addressed to George E. Lippincott, by the Grand Rapids Trust Company as receiver of William Horner."

Said letter reads as follows:

"We have your favor of the 29th, and note the price W. D. Young charged Gillingham for 2-1.4" clear.

We certainly appreciate having this information and do not doubt that it is an absolute case. We know some of the mills have

not as yet come up on their prices on these items but they are coming to it and 50% of them are as high as we are and some of them higher.

Please let this drift along a little while longer and see what the [fol. 1064] others do. We do not want to put our prices above the current market and if the new list will not stand we will have to make them lower. We do not believe there will be any necessity of doing so, however, and wish you would keep us advised.'

Mr. Johnston: The next letter is dated January 25th, 1922, quoting from the second paragraph:

'We also note what you say regarding the prices for Reading. Now, these figures seem pretty low but we have wired you to meet them if necessary as, of course, we do not want to turn down any business. We think, however, you have transposed the prices of the 2-1.4" and 2" clear and, in fact, our acceptance of these prices is based on the 2" at \$90.00 and 2¼" at \$95.00, instead of as you have them in your letter.'

Mr. Johnston: The next letter is dated July 10th, 1922, quoting as follows, from the Grand Rapids Trust Company, Receiver of William Horner, to George E. Lippincott:

'We would appreciate it very much if you would let us have advice from you as to how you find our last list.

The writer knew when he sent this out it was fairly high but we were pretty well stocked up with orders and did not care to quote very low and take on too much business, at the present time. In view of the circumstances under which we are working, it is absolutely necessary that we get the best prices possible for the flooring we put out.'

Mr. Johnston: The last letter from the Grand Rapids Trust Company as Receiver for William Horner, to George E. Lippincott, dated August 28th, 1922:

'If we were getting a price that would come anywhere near letting us out, it would be a different proposition, but we are losing money at the present prices on every foot of factory * * *'

By Mr. Johnston:

Q. By "factory" I assume he means factory flooring?

A. That is a grade, yes.

Mr. Johnston reading):

'* * * shipped and, as you can readily see, we are not getting much more than the cost of the rough material for this stock, at the present time. The writer would surely be in a bunch of trouble if he made any allowance in a proposition of this kind and we feel that Mr. Crowell is absolutely mistaken in asking for one.'

The Witness: That is a matter of asking for an allowance on grade. There were too many short length."

[fol. 1065] These letters that have been read in evidence are typical of my method of doing business with William Horner with respect to modifying prices from time to time to meet competition. They always express the relationship that existed between us during all the time. William Horner was at all times seeking to keep his prices in line with the market and, where the cost would permit, to cut his prices to a point that would permit me to take the business in competition with other manufacturers.

By standardization I understand a standardization of grade, length and size, which are the principal items in selling maple flooring. Standardization has been a great benefit so far as grade, thickness and width are concerned and the reinspection service. In dealing with mills that are members of the Maple Flooring Manufacturers Association we always have the privilege of an official inspection of the grade or reinspection at destination if there is a complaint, which is done by official graders of the Maple Flooring Manufacturers Association. This you do not have if you deal with mills that are not members of the Association. Of course, there are practically only three grades in maple flooring, but to inspect maple flooring it means opening and untying all the bundles, and quite a nuisance to a retail yard, whereas, if you sell and the retail yard knows he is buying lumber from a mill that is a member of the Association, he knows that it has been graded on official rules of inspection which are typewritten and are available to him.

"Q. In your opinion, is the standardization then, as you have described it, a benefit to the consumer of maple flooring?

[fol. 1066] A. A great benefit. I have seen especially this benefit in shipments which have been made from southern mills who were not members of the Association, in which either the grade or length was not up to the rules of the Maple Flooring Manufacturers Association.

Q. And have you found from your experience that the standardization of this product has any effect of eliminating competition or preventing a variation in price?

A. None whatever.

Q. So that the standardization of product is in your judgment beneficial to all concerned?

A. Yes, a great asset to the trade in general.

Q. And the consumer as well?

A. Yes.

Q. And the reinspection service that you referred to, is that a beneficial thing to the retail yard purchasing the lumber?

A. It is very beneficial to the retail yard and to all concerned, as it assures a fair treatment by all concerned."

I stated that I also handled yellow pine flooring. The variation in prices asked by different manufacturers of maple flooring is every bit as great as the variation in prices asked for yellow pine flooring. I would almost be tempted to say that the variation in prices of maple flooring is greater because there is more yellow pine floor-

ing used and manufacturers are not long on as many items as are the manufacturers of maple flooring. It is my experience that whether a manufacturer is long or short of different sizes is a big factor in the determination of price. Supply and demand, in other words, largely determine the price. From time to time I receive [fol. 1067] price lists from other manufacturers of maple flooring. I have taken from my files a number of price lists of the Nichols & Cox Lumber Company of Grand Rapids, Michigan. Some were mailed to me upon request and others were sent me at my solicitation. All of them were received by me in the ordinary course of business. The Nichols & Cox prices are f. o. b. mill. I know the freight rate on the various grades and sizes of maple flooring from Grand Rapids, Michigan, to Philadelphia. Nichols & Cox usually state what the freight rate is in their letter. On many of the lists I have added the amount of freight in pencil. One of those price lists is the third sheet attached to the Defendants' Philadelphia Exhibit 1 for identification. I received that list and it has my handwriting on it. The amount of freight from Grand Rapids, Michigan, to Philadelphia, on 13/16 x 2 1/4 inch face maple flooring is \$8.50 per thousand, and to the prices named in the Nichols & Cox Lumber Company price list it would be necessary to add \$8.50 to the prices contained in Nichols & Cox Lumber Company list of April 25th, 1922. Nichols & Cox prices on 13/16 by 1 1/2 inch maple flooring for the following grades would be as follows:

Clear	\$93.50
No. 1	66.50
Factory	23.50

By adding the freight to the prices contained in the Nichols & Cox Lumber Company's price lists, said prices may be properly compared with the prices of the other manufacturers, all of whom quote prices f. o. b. cars Philadelphia. All the prices would be subject to a commission, but the prices quoted by the different manufacturers, including the prices of Nichols & Cox Lumber Company if freight be added thereto, would be the prices which would be quoted by me [fol. 1068] as a wholesaler to the trade. I received the letter dated April 1st, 1922, from the Grand Rapids Trust Company as Receiver for William Horner in the ordinary course of business. Said letter is addressed to me, the first paragraph of same reading as follows:

"We have your message of the 20th, and in reply have wired you as follows, f. o. b. Philadelphia, on 13/16 by 1 1/2" maple flooring. Clear \$84.50, No. 1, \$60.00; Factory \$23.50."

The prices mentioned in said letter from the Grand Rapids Trust Company as Receiver were for a thousand feet f. o. b. cars Philadelphia. For purposes of comparison I read from the price list of Bigelow-Cooper Company dated April 10th, 1922, on 13/16 by 1 1/2 inch face maple flooring on the following grades, as follows:

Clear	\$88.50
No. 1	66.50
Factory	23.50

(Said Defendants' Philadelphia Exhibit 1 for identification, consisting of three sheets, marked Defendants' Philadelphia Exhibit No. 1, and received in evidence.)

Defendants' Philadelphia Exhibit No. 2 for identification includes as the second sheet thereof a price list of Nichols & Cox Lumber Company, which was taken from my files and was received by me in the same way as the other price lists about which I have testified. To the prices on said list I have added the freight in order to ascertain the f. o. b. Philadelphia price. The prices mentioned are also subject to a \$2.00 commission, but that has not been taken out, just as the prices named by the West Michigan Flooring Company are subject to a \$2.00 commission.

Defendants' Exhibit 3 for identification contains a second sheet headed "Special Stock and Price List" from the Nichols & Cox [fol. 1069] Lumber Company. That sheet was also taken from my files and was received by me in the ordinary course of business, and the notations on said sheet show the f. o. b. cars Philadelphia prices.

Defendants' Exhibit No. 5 for identification is a letter addressed to me by the Kerry & Hanson Flooring Company under date of October 10th, 1922. That latter was received by me in the regular course of mail. The first three paragraphs of that letter read as follows:

"Answering your letter of October 6th, at the present time we are unable to quote 13/16 by 2 1/4" clear, #1 or Factory Maple flooring, due to our being sold ahead 60 to 90 days, at least.

We can quote for prompt shipment:

1 car 13/16 x 1 1/2" Clear Maple Flg. at	\$87.50 per M.
1 " " #1 " " "	77.50 " "
1 or more	
cars—13/16 x 3 1/4" Clear " " "	88.50 " "
" " #1 " " "	78.50 " "

These prices are f. o. b. cars Philadelphia, include \$2.00 per M commission to you, in addition to cash discount to customer of 2%-15, 1%-30, net 60 days, from date of invoice, after deducting the freight, which is net."

"Q. Will you compare those respective prices contained in that quotation with the prices of the same grade and size of maple flooring as shown in the Bigelow quotation and Bigelow price lists which has been heretofore identified by Mr. Pfisterer as having been received by Lloyd and Company?

The Witness: The list of the Bigelow-Cooper Company dated October 10th, 1922, is, on the item of 13/16 by 1 1/2" Maple Floor-

ing, \$92.75 for clear, as compared with Kerry & Hanson's price of October 10th of \$87.50 per thousand.

The price of Bigelow-Cooper on No. 1, same size, is \$80.75, as compared to \$77.50 of Kerry and Hanson.

[fol. 1070] The price of Bigelow-Cooper on 13/16 by 3 1/4 clear is \$88.75 as compared with Kerry and Hanson's price of October 10th of \$88.50.

The price of Bigelow-Cooper on 13/16 by 3 1/4" No. 1 is \$78.75 as compared with the price of Kerry and Hanson of October 10th of \$78.50.

Both lists show delivered Philadelphia rate."

(The two documents comprising Defendants' Philadelphia Exhibit 5 for identification were received in evidence as Defendants' Philadelphia Exhibit No. 5.)

The second sheet of Defendants' Exhibit 6 for identification is a price list of Nichols & Cox Lumber Company, dated January 10th, 1923, and is one of the lists which I received. The pencil notation after the typewritten figures show the delivered f. o. b. Philadelphia price.

Defendants' Exhibit 8 for identification is a letter dated March 22, 1923, addressed to me by the Kneeland-Bigelow Company. I received said letter in the regular course of mail. The second sheet of said exhibit is a letter addressed to me by the Nichols & Cox Lumber Company, Grand Rapids, Michigan, under date of March 22d, 1923. Both lists were received by me in the regular course of mail. In said letter Nichols & Cox say that their price of \$92.75 on 13/16 by inch and a half face Clear beech flooring is \$10.00 less than their price for the same size and grade of maple flooring. That would make their price on maple flooring \$102.75. The price on maple flooring of the same grade and size quoted me by the Kneeland-Bigelow Company on March 22d, 1923, was \$97.75.

(The two letters last above mentioned were received in evidence as Defendants' Philadelphia Exhibit No. 8)

[fol. 1071] "Q. Defendant's Exhibit No. 9 appears to be a letter written by you to the Lawton Flooring and Shingle Company, together with a price list attached thereto, showing prices of the Indiana Flooring Company on various sizes and grades of maple flooring. Was that letter sent by you to the Lawton Flooring and Shingle Company?

A. Yes.

Q. On or about the date which it bears?

A. Yes.

Q. July 3rd, 1923?

A. Yes.

Q. Is the list attached to that letter a list of the quoted prices as of June 26th, 1923 of the Indiana Flooring Company?

A. This list is William Horner's.

Q. As of June 26th, 1923.

A. Yes.

Q. There is attached to this same exhibit a price list of the Kneeland-Bigelow Company under date of June 25th, 1923, which has heretofore been identified by Mr. Pfisterer. Will you kindly read into the record the comparison of prices on maple flooring in so far as the two lists pertain to two same grades and sizes of flooring, comparing each size and grade separately, if you will.

A. My price list, which I sent to Mr. Lawton, represents the price of the Grand Rapids Trust Company, receiver for William Horner.

Q. Those are F. O. B. Philadelphia prices?

A. Yes, and the price on 13-16 by 1-1.2 clear is \$106 by William Horner, as compared with \$97.75 of the Kneeland-Bigelow Company.

On 13-16 by 1-1.2" No. 1, the price of William Horner is \$93 and the price of Kneeland-Bigelow Company is \$85.75.

The price of William Horner on 13-16 by 1-1.2" factory is \$44, as compared with Kneeland-Bigelow's price of \$47.75.

By Mr. Benton:

Q. Are those quotations dated the same day?

[fol. 1072] A. The date of my quotation is June 26th, 1923.

The price of William Horner on 13-16 by 2" is \$106 for clear as compared with Kneeland-Bigelow Company's price of \$105.75.

Horner's price on the same size, No. 1, is \$96 as compared with Kneeland-Bigelow's of \$92.75.

Horner's price on the same size in factory is \$55 as compared with Kneeland-Bigelow's price of \$67.75.

William Horner's price on 13-16 by 2¼" clear is \$113, as compared with Kneeland-Bigelow's price of \$107.75.

Horner's price on the same size in No. 1 is \$103 as compared with Kneeland-Bigelow's price of \$97.75.

William Horner's price on the same size, on factory grade, is \$58 as compared with Kneeland-Bigelow's price of \$57.75.

William Horner's price on 13-16 by 3-1.4 clear is \$98.75 as compared with Kneeland-Bigelow's price of \$98.75.

William Horner's price on the same size, No. 1 grade, is \$88.75 as compared with Kneeland-Bigelow's price of \$93.75.

William Horner's price on the same size, factory grade, is \$66.75, as compared with Kneeland-Bigelow's price of \$63.75.

The price of William Horner on 1-1.16 by 2" clear is \$108.75, as compared with Kneeland-Bigelow's price of \$107.75.

William Horner's price on the same size, No. 1, is \$93.75 as compared with Kneeland-Bigelow's price of \$97.75.

William Horner's price on the same size and factory grade is \$48.75 as compared with Kneeland-Bigelow's price of \$54.75.

William Horner's price on 1-1.16 by 2-1.4 clear is \$113.75 as compared with Kneeland-Bigelow's price of \$112.75.

William Horner's price on the same size, No. 1 grade, is \$108.75 as compared to Kneeland-Bigelow's price of \$102.75.

William Horner's price on the same size, factory grade, is \$58.75 as compared with Kneeland-Bigelow's price of \$57.75.

[fol. 1073] William Horner's price on 1-1.16 by 3-1.4 clear, is \$105 as compared with Kneeland-Bigelow's price of \$103.75.

William Horner's price on the same size, No. 1 is \$98.75 as compared with Kneeland-Bigelow's price of \$98.75.

William Horner's price on the same size, factory grade, is \$68.75 as compared with Kneeland-Bigelow's price of \$57.25. Both lists are delivered Philadelphia rate.

Q. Both lists are the same so far as any deductions or commission is concerned, commission not being deducted from these prices named, is that right?

A. That is right."

(Said letter and the two lists accompanying the same were received in evidence as Defendants' Philadelphia Exhibit No. 9.)

Cross-examination.

By Mr. Benton:

"Q. To how many manufacturers do you usually send inquiries for quotations on maple flooring in general?

A. I cannot say that I usually send to more than the Indiana Flooring Company or the Grand Rapids Trust Company, and I do not usually send to them if I already have their price, unless occasion develops where the price is too high and I ask them whether they want to meet it, but I have sent inquiries of course to I guess practically all the members of the association at different times.

Q. There is usually no purpose to be subserved by sending inquiries for quotations to others than the two or three with whom you usually do business?

A. There is a purpose, because I am not confined entirely in my purchases to William Horner nor the Indiana Flooring Company, and I have purchased from other people.

Q. The Indiana Flooring Company is not a member of the Association?

A. They are not a member, no. I have bought from other members besides William Horner.

[fol. 1074] Q. You don't know of your own knowledge, by reason of quotations sent to you, the prices quoted by the other manufacturers? I gather that from the statement you made some time ago, that the only way in which you knew the quotations of the other manufacturers was from looking at the quotations received by your competitors and your associates. Then you do not know of your own knowledge the quotations given by the other manufacturers?

A. I know what they have quoted me. When they quote a retailer, they do not advise me what they quote, of course.

Q. Then you do not know of your own knowledge.

You answered a question propounded a while ago by Mr. Johnson to the effect that you knew what the other prices were?

A. I do know it of my own knowledge in cases where I have seen the prices in the hands of the retailer.

Q. Not from quotations received by you?

A. No—where I have seen the signed letter.

Q. Is not Ward Brothers one of your very strongest competitors in the maple flooring industry?

A. No, I would not say they were.

Q. Isn't it one of the strongest?

A. They are on- of the competitors that I have to buck up against, yes, but I would not say they were as strong as Bigelow-Cooper, for instance.

Q. Have you noticed any difference in the spread of quotations on maple flooring during the years 1920, 1921 and during the year 1922?

A. You mean whether they were greater in one year, the spread, than in another?

Q. Yes, has there not been some material difference?

A. It depended entirely upon market conditions, whether the market was good.

Q. Has there been a variation?

A. Oh yes.

Q. Has there not been a difference in the variation of quotations between the years 1920 and 1921 and the year 1922?

A. I could not answer that without going back and comparing them.

[fol. 1075] DEPOSITION OF W. N. LAWTON, TAKEN, PURSUANT TO
STIPULATION, AT PHILADELPHIA, PENNSYLVANIA,
ON NOVEMBER 2D, 1923.

W. N. LAWTON, being duly sworn, testified as follows:

Direct examination.

By Mr. Johnston:

I live in Philadelphia and am president of the Lawton Flooring & Shingle Company. We distribute by wholesale oak and maple flooring as well as other lumber products. I have been engaged in the lumber business in one capacity or another for about 20 years. I have been handling maple flooring and lumber for more than two years. I handle at least a million feet of maple flooring a year. Until September 8th of this year we confined our sales exclusively to lumber yards and planing mills. Since that time we sell both at wholesale and retail. As president of the Company I look after purchases and sales and am now and have been for the past two years familiar with the maple flooring market. We have the exclusive sales agency for the West Michigan Flooring Company of Manistee, Michigan, for a given territory. We purchase the flooring outright from that company, if we are selling it direct to others, and are allowed a certain commission. Some of the flooring that we purchase is put in our warehouse and some is shipped direct to others

by the West Michigan Flooring Company. During the time that I have been engaged in the handling of maple flooring I found that competition in the sale of said flooring in Philadelphia is very keen and intense. The variation in prices quoted by the different persons selling maple flooring in competition with our Company ranges from \$1.00 to \$5.00 per thousand. There has at all times been a variation [fol. 1076] in the prices which the different manufacturers are quoting for the same grade, quality and size of maple flooring. I know of such variation because of the flooring that has been offered to us by the different manufacturers and by coming in competition with others in quoting to prospective customers. We receive price lists from some manufacturers other than the Michigan Flooring Company. We compare such price lists with the prices quoted us by the West Michigan Flooring Company.

"Q. Has there ever been a time since you have been engaged in the purchase and sale of flooring, when there has been a practical uniformity in the price charged by manufacturers for their various grades and qualities of flooring?

A. Not to my knowledge.

Q. If such a condition had existed, would you have known about it in your activity in the trade?

A. I think I would.

Q. You are in touch with the maple flooring market practically every day?

A. Yes.

Q. And have been ever since you have been in it?

A. Yes.

Q. And are very active in pushing that product?

A. Very much so in this market, yes, sir.

Q. You also handle oak flooring, believe?

A. Yes.

Q. Is there as great a spread between the prices asked by the manufacturers of maple flooring for a given grade or quality of maple flooring as there is between the prices asked by oak flooring manufacturers for their different grades of work?

Mr. Benton: That is objected to in that it is based on the present conditions and is therefore not material or relevant to the issues.

[fol. 1077] The Witness: Yes, sir.

By Mr. Johnston:

Q. Has the difference or spread between the prices asked by maple flooring manufacturers for a given size and quality of maple flooring been as great during your familiarity with the maple flooring business as the spread between the prices of oak flooring asked by the various oak flooring manufacturers?

A. Yes."

In addition to the regular price lists received from time to time from the West Michigan Flooring Company, we also received special quotations from time to time, and also modifications of previous

price lists. In meeting competition of other manufacturers it has been necessary for us from time to time to ask the West Michigan Flooring Company to reduce the prices contained in their current price lists. In some cases the West Michigan Flooring Company were in position to meet competition; in other cases on account of labor conditions, cost of manufacture, cost of rough lumber, they they were not in position to meet competition and the business would be procured by some other manufacturer who quoted a lower price. According to my observation, the prices of maple flooring have been determined by supply and demand. If a manufacturer is loaded up with a different grade or size, he cuts the prices and moves it. On the other hand, if he is oversold or has a small stock the prices are firm. The situation in the maple flooring industry is no different than the situation in other lumber lines.

I have had occasion to observe the effect of the standardization of maple flooring. The standardization as to workmanship permits the use of stock from several mills on one job. In this way the [fol. 1078] average purchaser has a wider field of selection. Standardization also results in greater competition among manufacturers. I have never had any occasion to ask for reinspection of flooring purchased by me. The letters and telegrams you show me were either sent to or received by me from the West Michigan Flooring Company in the ordinary course of business.

"Mr. Johnston: I now offer in evidence and ask to read into the record portions of the following letters and telegrams passing between the West Michigan Flooring Company and the Lawton Flooring and Shingle Company as bearing upon this question of competition and efforts of the manufacturers to meet competitive prices. All of this correspondence took place in the year 1923, beginning January 16th.

Mr. Johnston: The first document is a wire from the Lawton Flooring and Shingle Company to the West Michigan Flooring Company dated January 16th, 1923, reading as follows:

'Wire immediately best price subject to regular commission on four cars thirteen sixteenths by two and quarter Number One Maple delivered Philadelphia stating when you can ship. Competition keen unable to land this order at list price.'

Mr. Johnston: The next document is a confirmation of telegram received from the West Michigan Flooring Company addressed to the Lawton Flooring and Shingle Company under date of June 4th, 1923, reading as follows:

'If necessary to meet legitimate competition will authorize five dollars reduction number one and clear two and a quarter inch.'

Mr. Johnston: The next is a letter of the West Michigan Flooring Company to the Lawton Flooring and Shingle Company under date [fol. 1079] of July 10th, 1923. I will read two paragraphs.

'As for the 2 1/4" face clear and No. 1, we, of course, want to keep you lined up where you can meet legitimate competition and we are going to leave this largely to your good judgment as to whether a concession of \$5.00 per M from our list No. 66 should be made on these two items.'

'Sales of course have slowed up to a considerable extent, however, June and July are usually regarded as a dull period in the flooring business so far as sales are concerned. We are in hopes that there will be no material break in the market as a result because manufacturing costs and the prices at which the rough lumber is being held do not warrant lower prices on flooring. The old law of supply and demand, however, will govern this condition to some extent, we presume.'

Mr. Johnston: The next is a letter from the Lawton Flooring and Shingle Company to the West Michigan Flooring Company dated July 2nd, 1923, reading as follows:

'For your information the following prices are being quoted on maple flooring here by the Indiana Oak Flooring Company.

13-16 by 2-1 1/4" fc. Factory Maple Flg. at \$57.50 per M'.

13-16 by 2-1 1/4" fc. #1 Maple Flg. at \$97.50 per M'.

13-16 x 2-1 1/4" fc. Clear Maple Flg. 107.50 per M'.

Are you going to be in position to meet competition of this kind?'

Mr. Johnston: The last letter is one of July 21st, 1923, from the West Michigan Flooring Company to the Lawton Flooring and Shingle Company, the first two paragraphs of which read as follows:

'We have decided to revise our prices on the "Acme" Brand Maple Flooring to a little lower level than those quoted in our List No. 66, believing conditions as they exist today necessitate this move.

'We are accordingly enclosing herewith copy of our revised price list our No. 67, the basis upon which we trust you will be in line to meet legitimate competition with the "Acme" Brand Flooring.' [fol. 1080] Those letters are typical of the correspondence that has passed between me and the West Michigan Flooring Company since I have been selling their flooring in this territory. I have from time to time received price lists from the West Michigan Flooring Company. Most manufacturers of maple flooring send out their price and stock lists from time to time. I have received stock and price lists from others and have given you a considerable number of them taken from my files. The first price list attached to Defendants' Exhibit No. 2 for identification is one of the price lists which I received in the regular course of business from the West Michigan Flooring Company, and is their price list of July 21st, 1922. The prices on that list were quoted by me to the trade generally and I as a wholesaler was entitled to \$2.00 commission. The prices stated on said lists are the prices which were quoted by me to the trade without the deduction of the commission. The prices were f. o. b. cars Philadelphia.

"Q. Will you kindly compare and read into the record for that purpose the prices quoted by the West Michigan Flooring Company—which, by the way, are f. o. b. Philadelphia?

A. Yes.

Q. With the prices quoted for, in each instance, the same product by Nichols and Cox Lumber Company, f. o. b. Philadelphia. It has been testified by Mr. Lippincott that the pencil prices represent the f. o. b. Philadelphia prices on this second list. If you will kindly compare those two for us in the record so that we will have it in readable form?

A. Price list No. 60, dated 7-21-22, West Michigan Flooring Company's list, located at Manistee, Michigan. The following [fol.1081] prices are f. o. b. car, freight allowed, Philadelphia:

13-16 by 1-1.2" face clear maple flooring, \$92.75;

Nichols & Cox list, Grand Rapids, Michigan, 13/16, July 28th, 1922, list No. 105, 13/16 by 1-1.2" face clear, \$93.50.

West Michigan Flooring Company price, 13/16 by 1-1.2" face No. 1, \$77.75.

Nichols & Cox price, \$83.50.

West Michigan price, 13/16 by 1-1.2" face factory, \$27.75;

Nichols & Cox, \$33.50.

The items of 13-16 by 2" face, West Michigan price, clear, \$92.75;

Nichols & Cox, \$100.50.

13-16 by 2" face, West Michigan, No. 1, \$82.75;

Nichols & Cox, \$90.50.

13-16 by 2" face, factory, West Michigan price, \$35.75;

Nichols & Cox price, \$41.50.

13-16 by 2-1.4" face, clear, West Michigan price, \$102.75.

Nichols & Cox price, \$103.50.

13-16 by 2-1.4" No. 1, West Michigan, \$92.75;

Nichols & Cox, \$93.50.

13-16 x 2-1.4 factory, West Michigan, \$42.75;

Nichols & Cox, \$43.50.

13-16 x 3-1.4" face, West Michigan, clear, \$87.75;

Nichols and Cox, \$104.50.

13-16 x 3 1/4" face, West Michigan, \$77.75;

Nichols & Cox, \$89.50.

3-8 by 1-1.2" West Michigan, clear, \$69.

Nichols & Cox, \$69.25.

3-8 by 2" clear, West Michigan stock, \$69.

Nichols & Cox, \$69.25."

[fol. 1082] (Said defendants' Philadelphia Exhibit 2 for identification was received in evidence as Philadelphia Exhibit No. 2.)

Another of the price lists of the West Michigan Flooring Company is dated July 13th, 1922, and it was taken from my files by me. Said list was received in the ordinary course of business.

"Q. Will You kindly compare the prices shown on the West Michigan Flooring Company list No. 59 of July 17th, 1922, with

prices of such products as are shown on the detailed Nichols & Cox Company list of July 10th, 1922, being their list No. 104.

A. Prices shown as on list No. 59, West Michigan Flooring Company, dated July 13th, 1922:

West Michigan price on 13-16 by 1½" face clear, maple, \$92.75;
Price on Nichols & Cox is \$88.50.

Q. That seems to be the only item on those two lists that can be compared?

A. Yes."

(Said documents were received in evidence as Defendants' Philadelphia Exhibit No. 3.) Defendants' Exhibit No. 4 for identification contains a price list of the West Michigan Flooring Company, No. 61, and is dated September 12th, 1922. That list was received by me in the ordinary course of business and was taken from my files.

"Q. Will you kindly compare that price list with the attached price list of the Kneeland-Bigelow Company which has been heretofore identified by Mr. Pfisterer of the William M. Lloyd Company, and which is dated September 1st, 1922?

A. West Michigan list No. 61, September 12th, 1922:

13-16 by 1-1.2" face clear maple, \$92.75.

Bigelow brand, \$92.50;

[fol. 1083] 13-16 by 1½" No. 1 West Michigan price \$82.75;

Bigelow brand, \$80.50.

13-16 by 1½ face, West Michigan stock, factory grade, \$32.75;

Bigelow price, \$32.50.

13-16 by 2" face, clear, West Michigan price, \$97.75;

Bigelow brand, \$97.50.

13-16 by 2" face, No. 1, West Michigan, \$87.75;

Bigelow brand, \$81.50.

13-16 by 2" face, factory, West Michigan price, \$37.75; Bigelow brand, \$40.50.

13-16 by 2¼" face, clear, West Michigan, \$102.75; Bigelow brand, \$100.50.

13-16 by 2¼" face, No. 1, West Michigan, \$92.75; Bigelow brand, \$93.50.

13-16 by 2¼" face, Factory, West Michigan, \$42.75; Bigelow brand, \$43.50.

13-16 by 3¼" face, clear, West Michigan stock, \$87.75;

Bigelow brand, \$88.50.

13-16 by 3¼" face, No. 1, West Michigan stock, \$77.75;

Bigelow brand, \$78.50.

¾ by 1½" clear, West Michigan stock \$69.00.

Bigelow price, \$64.

¾ by 2" clear, West Michigan stock, \$69.00.

Bigelow, \$69.

By Mr. Johnston:

Q. All those prices are f. o. b. Philadelphia for both lists?

A. Yes.

Q. And are on the same basis of comparison?

A. Yes."

[fol. 1084] (Said Defendants' Phila. Exhibit No. 4 for identification was received in evidence as defendants' Philadelphia Exhibit No. 4.)

"Q. I now show you Defendants' Phila. Exhibit No. 6 for identification. Both of the price lists have been identified by other witnesses, but I will ask you for our convenience on the record to kindly read the comparison of prices as shown on those two lists into the record.

A. Nichols & Cox price list No. 108, dated January 10th, 1923; Kneeland-Bigelow price list dated January 27th, 1923.

Nichols & Cox price, 13-16 by 1½" clear, \$93.50; Bigelow brand, \$92.75.

13-16 by 1½" face, No. 1, Nichols & Cox, \$86.50; Bigelow brand, \$80.75.

13-16 by 1½" face, factory, Nichols and Cox price, \$43.50; Bigelow brand, \$32.75.

13-16 by 2" face, clear, Nichols & Cox, \$98.50; Bigelow brand, \$102.75.

13-16 by 2" face, No. 1, Nichols & Cox, \$88.50; Bigelow brand, \$92.75.

13-16 by 2" face, factory, Nichols & Cox, \$43.50; Bigelow brand, \$48.75.

13-16 by 2¼" face, clear, Nichols & Cox, \$103.50; Bigelow brand, \$107.75.

13-16 by 2¼" face, No. 1, Nichols and Cox, \$93.50; Bigelow brand, \$97.75.

13-16 by 2¼" face, factory, Nichols & Cox, \$48.50; Bigelow brand, \$52.75.

[fol. 1085] 13-16 by 3¼" face, clear, Nichols & Cox, \$99; Bigelow brand, \$88.75.

13-16 by 3¼" face, No. 1, Nichols & Cox, \$89; Bigelow brand, \$83.75.

13-16 by 3¼" face, factory, Nichols & Cox, \$53; Bigelow brand, \$54.75.

¾ by 1½" and 2" face, clear, Nichols and Cox, \$65; Bigelow brand, \$64 on 1½" face and \$69 on 2" face.

¾ by 1½" and 2" face, No. 1, Nichols and Cox, \$50; Bigelow brand, \$49 on 1½" and 2" face."

(Defendants' Philadelphia Exhibit No. 6 for identification was received in evidence as Defendants' Philadelphia Exhibit No. 6.)

The first sheet of Defendants' Exhibit No. 7 for identification is price list No. 63 of the West Michigan Flooring Company, dated

February 1st, 1923. Said list was received by me in the ordinary course of business.

"Q. Attached to that price list is a list of the Kneeland-Bigelow under date of January 27th, 1923, three days preceding the February 1st list of the West Michigan Flooring Company, which Bigelow list has heretofore been identified by Mr. Pfisterer. Will you kindly read into the record the comparison of the prices shown on those two lists of the respective grades and sizes of maple flooring?"

A. Price list No. 63 dated February 1st, 1923, West Michigan Flooring Company, Manistee, Michigan:

The price list of the Kneeland-Bigelow Company dated January 27th, 1923:

[fol. 1086] 13-16 by 1½" face, clear, maple, West Michigan price, \$97.75; Bigelow brand, \$92.75.

13-16 by 1½" face, No. 1, West Michigan price, \$87.75; Bigelow price, \$80.75.

13-16 by 1½" face, factory, West Michigan price, \$32.75; Bigelow brand, \$32.75.

13-16 by 2" face, clear, West Michigan price, \$97.75; Bigelow price, \$102.75.

13-16 by 2" face, No. 1, West Michigan price, \$87.75; Bigelow price, \$92.75.

13-16 by 2" face, factory, West Michigan price, \$42.75; Bigelow price, \$48.75.

13-16 by 2¼" face, clear, West Michigan price, \$107.75; Bigelow price, \$107.75.

13-16 by 2¼" face, No. 1, West Michigan price, \$97.75; Bigelow price, \$97.75.

13-16 by 2¼" face, Factory, West Michigan price, \$47.75; Bigelow price, \$52.75.

13-16 by 3¼" face, clear, West Michigan price, \$87.75; Bigelow price, \$88.75.

13-16 by 3¼" face, West Michigan, No. 1, price \$77.75; Bigelow price, \$83.75.

¾ by 1½" face, clear, West Michigan price, \$69; Bigelow price, \$64.

¾ by 2" clear, West Michigan price, \$69; Bigelow price, \$69."

(Said Exhibit received in evidence as Defendants' Philadelphia Exhibit No. 7 for identification.)

[fol. 1087] The variations in price appearing on the exhibits that have been introduced in evidence are typical of the variation which has existed since I have been familiar with the maple flooring industry in Philadelphia. We buy all our flooring f. o. b. cars Philadelphia in order to avoid filing claims with railroad companies for excess weights, rates, damage to material, etc. By buying delivered we also know exactly what the flooring is going to cost us f. o. b. cars our siding. Not only flooring, but all other lumber is bought on a delivered basis.

Cross-examination.

By Mr. Benton:

The West Michigan Flooring Company allows us \$2.00 per thousand commission. The flooring is billed to us at the prices contained in their price lists. In making the statement that all lumber, including maple flooring is sold on a delivered basis, I referred to carload lots. We have other correspondence in our files similar to that which has been introduced and the correspondence introduced in evidence is a very small portion of what our files contain. I simply selected a letter here and there as I came across them.

[fol. 1088] DEPOSITION OF EDWARD B. GORDON, TAKEN, PURSUANT TO STIPULATION, AT CHICAGO, ILLINOIS, ON OCTOBER 20, 1923

EDWARD B. GORDON, being duly sworn, testified as follows:

Direct examination.

By Mr. Johnston:

I live at Cambridge, Massachusetts, and am on the Research Staff of the Bureau of Business Research of Harvard University. I was graduated from the University of California with the A. B. degree and I am now a candidate for the Doctor's Degree at the Harvard Graduate School of Business Administration. The Harvard Graduate School of Business Administration is limited to college graduates and to persons with five years' business experience in a junior executive capacity. Courses are given there in marketing, finance, industrial management, statistics, economics, etc. The more prominent members of the faculty of said school are Mr. Taussig, Mr. Homer V. Vanderblue, Mr. J. A. Hettinger, Mr. M. T. Copeland, Mr. Wallace B. Donham. All these gentlemen are recognized authorities in their particular fields. I have been in the Graduate School of Business Administration for practically two years and as before stated, am on the Research Staff of the Bureau of Business Research. The Bureau of Business Research has two functions. Its primary function is to collect data for teaching purposes in the Graduate School of Business Administration; the second function is to conduct investigations into the cost of doing business in particular industries. In connection with the Bureau of Business Research, I have been engaged in making investigations and in working out statistical problems and cases in industrial fields. At the beginning of this year I made an investigation for a firm of New York lawyers of the construction and building industry. I am on the editorial board of the Harvard Business Review, which is a publication primarily for business executives and contains articles dealing with problems of interest to executives in all lines of in-

dustory, including banking. The publication is sponsored by the School of Business Administration of Harvard University. Mr. Melvin T. Copeland is the Director, Mr. Richard Lennihan is the Assistant Director and Mr. Malcolm McNear is in charge of the Cost Research of the Bureau of Business Research. All of the gentlemen above named are on the faculty of the School of Business Administration. My Major studies have been in economic and business statistics. In the course of my work at the Harvard School of Business Administration it has been necessary for me to familiarize myself with economics generally as well as the subjects in which I have specialized and with statistics, cost accounting, cost findings, etc. I am familiar with the methods in use in compiling business statistics and in the preparation of tables and charts to reflect business conditions, price trends, etc.

I have made an investigation of the matter of price of maple, beech and birch flooring. The period covered by my investigation is from 1913 to 1923 as far as figures were available. I have been engaged on that study for five months. Most of the work has been done at Cambridge, Mass. Parts of it have been done in New York, Chicago and Washington, D. C. Associated with me in said work was Grant Keehn, a graduate of the Harvard School of Business Administration and at present employed in research work in the Securities Department of Goldman-Sachs & Company, New York. I have ranked first in my studies during all the time that I have been at the [fol. 1090] Harvard School of Business Administration and Mr. Grant Keehn, who finished the course head of me, also ranked first. In the course of my studies at Harvard and in the practical work which I have done for the Bureau of Business Research I became familiar with the data upon which reports on business conditions are made; also with practically all the data in the building and construction field, that is, as to quantity of building, cost of material and labor, etc. As a part of my work I have familiarized myself with all sources of data and all the authorities upon business problems and statistics.

"Q. Now, will you tell us, Mr. Gordon, in just a word the scope of the inquiry which you have made into the price of maple, beech and birch flooring?

A. We have investigated the ability of the Association to control prices. We have made comparison with other commodities and particularly building commodity prices, building material prices, lumber prices, prices of competing floorings and an investigation of the factors of supply and demand of maple flooring, and the reaction of the prices of such flooring to those forces.

Q. Now, in considering the question of the control of the prices of maple, beech and birch flooring, is there any natural subdivision into which that subject would be divided from an economic standpoint?

A. Prices of any commodity could be controlled in four manners. They might be controlled continuously at an unreasonably low level, at an unreasonably high level or at a reasonable level, or sometimes at one of the above levels and sometimes at another.

Q. Now, taking up the first of those subdivisions as you have mentioned [fol. 1091], the control of prices at an unreasonably low level: Have you made a study of that subject in connection with the price of maple, beech and birch flooring?

A. Yes, sir.

Q. During the period of inquiry here, from 1913 up until 1923?

A. I have, yes sir.

Q. Just what have you found in connection with the study, what facts have you developed?

A. Well, the unreasonably low price level would be one that did not offer to the seller a price sufficient to cover his costs of production and allow him a reasonable profit for that particular line of enterprise.

Now, if a party were to control the price of a commodity at an unreasonably low price there would be no inducement for other supply of the commodity to be produced and sold, for the margin of profit so offered would be inadequate. That being the case no additional supply would be produced, and the party which had controlled its supply at the unreasonably low level would secure control of the potential supply. By "potential supply" I mean the additional supply which will be brought to the market at the price.

Q. Now, what did you find upon your investigation of the maple, birch and beech flooring industry in this country with respect to supply, to the supply of those in a position to produce and manufacture, and actually producing and manufacturing the product?

A. Well, had the Maple Flooring Manufacturers Association controlled the prices of maple, beech and birch flooring at an unreasonably low level, there would have been no other supply produced.

[fol. 1092] We therefore ascertained whether there was other supply produced, and I have here a list of approximately seventy producers of maple flooring who are not members of the Maple Flooring Manufacturers Association.

Q. Where did you obtain that list, Mr. Gordon?

A. This list was obtained from Mr. George W. Keehn, who secured them from his own knowledge, and from names supplied him by members of the Association.

Q. So that the correctness of that list will have to later be verified by Mr. George W. Keehn?

A. Yes, sir."

(Said list was received in evidence at the hearing upon the correctness thereof being verified by George W. Keehn, as Defendant's Gordon Exhibit 1.)

I made further investigation in order to ascertain the manufacturers of maple, beech or birch flooring in the United States. I went to Washington, D. C. and inquired at the United States Bureau of Forestry. They did not have any data other than maple lumber manufacturers. I also went to the Bureau of the Census and there saw the Chief Statistician for manufacturers, who arranged to have the census schedules for 1919 investigated in order to *such* such a list. These schedules, however, were made up in such manner

that manufacturers of maple, beech or birch flooring were not classified. I obtained a few names there, but not as many as we already had and no new names. I also went to the Bureau of Internal Revenue and the Department of Foreign and Domestic Commerce without being able to secure such a list. They did not have the manufacturers of maple, beech or birch flooring classified. I went to the Chamber of Commerce of the United States, where I was referred to [fol. 1093] two volumes in their library—namely, Hendricks' Commercial Register of the United States, published by S. E. Hendricks & Company, Inc., of New York City, and Thomas' Register of American Manufacturers. Hendricks Commercial Register of the United States is a source of names of manufacturers and has been published a good many years. It is used by the sales departments of various organizations as a means of securing the names of business concerns in particular industries. I correctly transcribed from that register the names of manufacturers of maple, beech or birch flooring whose names did not appear on the list supplied me by Mr. George W. Keehn. This is the additional list that I prepared of manufacturers of maple, beech or birch flooring who are not members of the Maple Flooring Manufacturers Association.

(Said list marked Defendants' Gordon Exhibit No. 2 and admitted in evidence.)

There are 25 manufacturers on Defendants' Gordon Exhibit 2 in addition to the names appearing on the list prepared by George W. Keehn as set forth in Defendants' Gordon Exhibit 1.

Referring to Thomas' Register of American Manufacturers, I would repeat about that publication what has been said about Hendricks' Commercial Register. From Thomas' Register of American Manufacturers I procured 8 additional names which did not appear on either of the two previous lists. I correctly transcribed said names from Thomas' Register.

(Said list of 8 additional names marked Defendants' Gordon Exhibit 3, and received in evidence.)

"Mr. Johnston :

Q. Have you finished the first subdivision into which you say the question of price control of maple, beech or birch flooring falls, [fol. 1094] namely, the unreasonably low price for a continuous period?

A. Yes, sir.

Q. Now, passing to the next subdivision, which I believe you stated was the control of prices of maple, beech or birch flooring at an unreasonably high level?

A. Yes, sir.

Q. Will you state what the factors are which enter into such control?

A. Well, the price which is unreasonably high would be one which offered to the seller a price sufficient to cover his costs of pro-

duction and allow him an unfair margin of profit for that particular line of enterprise.

If a party controlled the price of its supply at an unreasonably high level of price there would be special inducement for other supply to be produced and placed upon the market, for by so doing an adequate margin of profit would be offered to the producer of this additional supply.

If the price were maintained at the unreasonably high level this additional supply would be produced and placed upon the market. The result would be one of two things: either the price of the party attempting control at an unreasonably high level would be forced down to a reasonable level or he would lose the market to the producer of the additional supply which was offered at the lower price.

Q. And what did your study develop with respect to the ability of the Maple Flooring Manufacturers Association to control prices at an unreasonably high level?

A. To control the prices at an unreasonably high level it would be necessary to control the potential supply. That is, the supply that would be forthcoming at the price.

Q. And what did your investigation show with respect to whether [fol. 1095] or not the Maple Flooring Manufacturers Association did control the potential supply of this product, Mr. Gordon?

A. We investigated to determine whether the members of the Maple Flooring Manufacturers Association did control the potential supply. We investigated whether the Association or its members controlled the five factors or means of production.

Q. What are those five factors or means of production Mr. Gordon?

A. They are raw material, equipment, capital, management and labor.

In our investigation of the control of raw material we secured data showing the stand of maple, beech and birch timber in the United States and the stand of such timber owned or controlled by members of the Association.

Q. Now, is maple, birch or beech lumber the raw material and the only raw material used in the production of the finished product, maple, beech or birch flooring, Mr. Gordon?

A. Yes, it is, and it makes up approximately three-quarters of the cost of the finished product.

Q. Now, from what source did you obtain information as to the standing timber,—maple, birch and beech timber in the United States?

A. The data on the total stand was secured from the United States Forestry Service. The data on stand owned or controlled by members of the Association was secured from George Keehn, who secured the data in turn from the individual members of the Association.

This data indicates that members of the Association control or own less than two per cent of the total stand of maple, beech and birch timber in the United States.

[fol. 1096] I have prepared a table showing the proportion of the total cut of maple lumber in the United States used by members of

the Maple Flooring Manufacturers Association. The data used in the preparation of said table was secured from the United States Department of Agriculture, Forestry Service, and from Bulletin entitled "Lumber, Laths & Shingles, Bulletin of 1912, Nos. 232, 506, 673, 768 and 845, and the 14th Census of the United States, and Bulletin 1119.

(Said Table marked Defendants' Gordon Exhibit 4 and received in evidence.)

"Q. Now, Mr. Gordon, would you just refer to this table, Defendants' exhibit 4, (Gordon's) and explain just what that is very briefly, in view of the fact there seems to be some letters used there to express words, etc.?"

A. The first column indicates for the years 1912 to 1920, inclusive, the quantity of maple lumber production in the United States in millions of board feet.

The second column indicates for the years 1912 to 1920, inclusive, the quantity of maple flooring produced by all members of the Maple Flooring Manufacturers Association, in millions of board feet.

Q. Just where was that data obtained?

A. That data was secured from figures supplied us by Mr. Keehn.

Q. From Mr. George Keehn?

A. Yes.

Q. That is, from the records of the Association?

A. Yes, sir.

Q. Yes. Continue, Mr. Gordon.

A. The third column indicates the per cent of the total maple lumber cut in the United States, used by members of the Maple Flooring Manufacturers Association in the years 1912 to 1920, inclusive. This column represents the second column as a per cent of the first column. Since the maple flooring production is the finished product, and in its production there is a quantity of rough maple lumber wasted, these percentages shown in the third column were increased to include or allow for twenty-three per cent wastage, which data is indicated in the fourth column for the years 1912 to 1920 inclusive. This shows that the per cent of the total cut of maple lumber in the United States, used by members of the Maple Flooring Manufacturers Association, for the nine years, 1912 to 1920, was on the average less than 20 per cent.

Q. Now, where did you get that percentage of wastage, which you stated was 23 per cent?

A. The percentage of wastage was computed from the records of the Association, in their test runs.

Q. And did you look those over yourself?

A. Yes, we compiled the percentages.

Q. And made the computations, did you?

A. And made the computations.

Q. I note for the years 1921 and 1922 there is no data as to the maple lumber production in the United States. Now, why is that?

A. That has not been made available by the Forestry Service. They are always slightly behind in their records.

Q. So that that data cannot be obtained?

A. No, it was not available.

Q. Yes. Now, do you know, Mr. Gordon, from what source the Forestry Service compiled this data of the lumber produced?

[fol. 1098] A. This data was secured by the Forestry Service from reports made to them by individual establishments in the production of maple lumber in the United States.

Q. And are those reports voluntary or compelled by law, Mr. Gordon?

A. I believe that they are voluntary. The figures, consequently, therefore, are conservative, as not all producers make these voluntary reports.

Now, this table indicates that the members of the Association annually use less than twenty per cent of the total cut of maple lumber in the United States. This leaves eighty per cent of the raw material which could be transferred from its present use into the production of maple flooring, were the price of such flooring unreasonably high and thus offer a good margin of profit."

"Mr. Thompson: May I ask him a question or two at this point?

Mr. Johnston: Yes.

Mr. Thompson:

Q. Your figures for production, I take it, cover the total production of all grades of maple, beech and birch lumber?

A. This is just for maple lumber, not for 'maple, beech and birch.'

Q. Just for maple lumber?

A. Yes.

Q. All grades, the total amount of maple lumber produced, including all grades?

A. Yes, sir.

Q. You did not attempt in compiling that table, to segregate and determine the amount of maple lumber of the grades which are habitually or customarily used for the manufacture of maple [fol. 1099] flooring?

A. No, that would be impossible to do because the manufacturers making these reports to the Government do not or cannot estimate the particular grades. That is, they are saw mills, you see, and they cut the timber.

Mr. Thompson: Yes, I understand that.

A. And that, that you mentioned, is not available anywhere.

Mr. Thompson: That is all I wanted to ask him. I just wanted to understand that.

Mr. Johnston: All right.

Q. Why did you not obtain and tabulate the figures upon birch and beech timber?

A. Well, the figures on the production of the Maple Flooring Manufacturers Association do not segregate the flooring into maple, beech and birch. By far the major portion, approximately ninety

per cent of the total production of the Association is maple flooring, which leaves only ten per cent of beech and birch flooring.

Q. So that you regard beech and birch as being more or less of a negligible factor?

A. Yes, and in this table here—(indicating)

Mr. Johnston: Referring to Defendant's Gordon exhibit No. 4.

A. Referring to Defendants' Gordon exhibit 4, the quantity of maple flooring production is really maple, beech and birch flooring, which, when expressed as a percentage of the maple lumber production in the United States, gives a higher percentage, or, in other words, reacts to the disadvantage of the Association.

[fol. 1100] Q. That is to say, column two is what?

A. Column two includes beech and birch.

Q. Yes; and is approximately then ten per cent higher than the actual consumption of maple by the Association, is it?

A. Yes. Now, had we taken as our first column upon this table the production of maple, beech and birch lumber in the United States, we would have secured a figure far greater than the figures actually shown, which are for maple lumber only. Since the percentage of beech and birch flooring produced by the Association was—

Q. The Association members?

A. —Association members was so small, it was our opinion that to express it as a percentage, express the total of production of the members of the Association as a percent of the total production of maple, beech and birch, would give a misleading high figure. Now, this table indicates that the—I do not know whether I said this already or not?

Q. You said a high figure?

A. Yes.

Q. You meant by that that the percentage—

A. A low figure. Excuse me.

Q. That is, the percentage that the members use would be such a small percentage of the total lumber cut as really to be misleading?

A. Yes, sir.

Q. So that a fairer statement is made if you take only the maple lumber, is it?

A. Yes, sir.

Q. As a basis of the production of raw material?

[fol. 1101] A. Yes.

Q. Although that is not entirely fair to the members of the Association?

A. No, sir, it is not.

Now, this table indicates that the members of the Association annually use less than twenty per cent of the total cut of maple lumber in the United States, which leaves eighty per cent of this cut available to be transferred,—or to be processed into other forms.

Had the prices secured by members of the Association been unreasonably high, therefore, this remaining eighty per cent of the rough maple lumber cut was available, or would be available to be

transferred into the production of maple flooring, had there been an unreasonable or exorbitant profit available by so doing.

Q. Now, coming to the next factor in the control of production, namely, Capital: What did your investigation of the maple, beech and birch flooring industry disclose with respect to capital involved in that business, Mr. Gordon?

A. It was so inconceivable that members of the Association could or did control the capital that might be available that we did not consider it any further.

Q. You did not consider it a possible factor in the control of this product?

A. No, sir, because there is always capital available for any enter-[fol. 1102] prise where there is a good margin of profit available.

Q. Did you make any investigation as to the approximate capital which is required to enter into the business of manufacturing maple flooring.

A. Yes. It requires a very small sum to go into the production of maple flooring.

Data secured from various members of the Association indicate that an expenditure of thirty thousand dollars would be adequate to purchase the necessary equipment for the production of maple flooring.

Q. That brings us then to the next factor, as you give it to us, namely, Equipment?

A. Well, neither the members of the Association or the Association itself holds patents or any other control over equipment which is necessary to the production of maple flooring.

These machines can be purchased freely by anyone having the necessary capital.

The next factor is Management. And we might——

Mr. Johnston: Well, just before you go into Management, let me ask you this question:

A. Yes?

Q. Did you make any investigation as to whether or not manufacturers of other lines of flooring, as for instance, oak, southern yellow pine, etc., can, without expense, convert their equipment into the manufacture of maple flooring?

A. Yes, sir.

[fol. 1103] Q. What did you find as to that?

A. A manufacturer of oak, and similar flooring, can run maple flooring through the same machines or equipment that he uses for his oak flooring without need for additional equipment.

The factors of Management and Labor we considered unnecessary to go into, since it was inconceivable that the members of the Association controlled the managerial ability, or had control of the labor which constitute these two factors of production.

In addition to our study of the raw material factor, we secured data upon the number of maple lumber manufacturers in the United States who, at a very small expense, could produce maple flooring were the margin of profit attractive.

We have prepared a table which shows the number of maple

lumber manufacturing establishments in the United States in the years 1912 to 1920, inclusive.

Q. Where did you obtain this data, Mr. Gordon?

A. This data was secured from the bulletins on the production of Lumber, Lathes and Shingles in the United States, of the Bureau of Forestry of the United States Department of Agriculture.

This table shows the number of maple lumber manufacturing establishments in the United States, and in the eight leading maple lumber production States, individually.

Q. During the years that you have stated?

[fol. 1104] A. During the years stated, from 1912 to 1920, inclusive. This table indicates that on the average, during the nine year period, 1912 to 1920, there were 4,767 manufacturers of maple lumber who could have, at a small expense, produced maple flooring from their rough maple lumber had the price of maple flooring been unreasonably high, and offered an attractive margin of profit.

Q. That figure of 4,767 refers to the average in the United States?

A. Yes, sir, that is what I said, the average in the United States.

Mr. Johnston: You omitted that, but I presume you meant to say it.

A. Yes.

Q. Are the figures upon this table correctly taken from the bulletins which you have referred to, as the source of supply?

A. Yes, sir.

Q. And have been checked by you?

A. Yes, all of the tables in our exhibits have been checked with the original data and the actual typing has also been checked, and the computations, wherever such have been made, have been checked by both Mr. Grant Keehn and myself."

(Said table marked Defendants' Gordon Exhibit 5 and received in evidence.)

"Q. Now, have you considered all of the factors which enter into the question of control of the production still upon this subject of control, at an unreasonably high price?

[fol. 1105] A. Yes, we have considered the fact that had the prices been unreasonably high, such as to offer an attractive margin of profit, there were approximately one hundred non-member manufacturers of maple flooring who could have expanded their plants, and that there were on the average in the United States 4,767 manufacturers of maple lumber who could, with a very small investment, have turned their maple lumber into the production of maple flooring; and that there were manufacturers of competing floorings who could have produced such flooring with practically no additional investment, had the profit by so doing been attractive; and we have found out that the capital necessary to enter the production of maple flooring lumber was small, and that the members of the Association had no control of the raw material, maple lumber, nor of the capital, nor of the equipment, nor the management and labor necessary to the production of this flooring, and that it was entirely within the ability of others to have gone into the production of maple flooring

had the prices been unreasonably high, had the prices been unreasonable, and had there been an attractive margin of profit available by so doing.

Mr. Johnston: Then we come, Mr. Gordon to the question of control of prices, at a reasonable level.

Q. What did your study of this subject show you with respect to that phase of control?

[fol. 1106] A. Why, a reasonable price would be one which offered to the seller a price sufficient to cover his cost of production and allow him a reasonable or fair profit for that particular line of enterprise.

Control of the entire market price of a commodity at a reasonable level would necessitate that the seller, or the party attempting such control, have control of the potential supply of that commodity.

I have already defined what I mean by "potential supply."

Q. Why is that so, Mr. Gordon?

A. Now, if there were other supply or other uncontrolled supply produced and sold upon the market, the producers of this additional supply would not be obligated to sell their product at the same price realized for the controlled supply.

In this case, where the price is a reasonable one, it is set or fixed by its very reasonableness, for the producer of the uncontrolled supply was not forced or obligated to fix his price at the same level as the price of the controlled portion of the total supply."

"Q. What did you find in respect to the control of prices at a reasonable level, by members of this Association?

A. Well, we have already indicated that they did not have control of the raw material, or capital, equipment, management or labor necessary to the production of maple flooring.

Mr. Johnston: Then coming to the question of the control of [fol. 1107] prices sometimes at an unreasonably low and sometimes at an unreasonably high level:

Q. What did your study of this subject reveal with respect to that situation, as applied to the Maple Flooring Manufacturers Association members?

A. Well, this method of price manipulation would be done in the following manner:

The seller, A., with control of a portion of the supply would raise his price to an unreasonably high level in order to secure additional profit. Provided he did not have control of the potential supply of the product, other supply would be produced and sold under the inducement of an adequate margin of profit.

The seller, A., who was attempting price control would find additional supply placed upon the market at a lower price. He would be forced to lower his price in order to retain his market. The failure to do so would mean the loss of his market to the cheaper supply, which was available to the purchaser,—to the buyer. If he maintained his price at the unreasonable level he would be forced out of business. If he lowered his price, in order to keep his market, he would cut below the price of the additional supply which was be-

ing offered to buyers. The price of the seller, A., would be below the price of the uncontrolled supply for two reasons: First, the cost of production of the seller, A., would be less than the cost of production [fol. 1108] of the additional supply, for if this were not the case this additional supply would have been produced before; secondly, the additional supply, with the same demand, would cause the price to decline.

Thus, the result would be to drive the producer of this additional supply from the market. This manipulation of prices would be reflected in the prices realized by the seller, A., and would be evident in comparison with other prices, particularly the prices of similar commodities.

Q. For the purpose of ascertaining, therefore, whether there was in this case any such attempted fixation of prices at alternately high and low levels in the manner in which you have described, have you made a comparison of the prices realized by the members of the Maple Flooring Manufacturers Association for their product, with the prices for other products, and particularly for products falling within the same general class, Mr. Gordon?

A. Yes, sir.

Q. Such as lumber and building materials?

A. Yes, we have made a comparison of the prices realized by members of the Maple Flooring Manufacturers Association with an index of all commodity prices, an index of all building material prices, and an index of lumber prices, and also a comparison with the prices of competing floorings.

In addition we have compared the prices realized by members of the Association with the cost of the raw material, and with the cost [fol. 1109] of other manufacturing and marketing expenses.

Q. Turning then first to the subject of the comparison of the prices realized by the members of the Association for their product with the prices during the same period for other commodities, I will call your attention, first, to a chart, which I will ask to have marked for identification as Defendants' Gordon Exhibit No. 6 for identification; and also the tables which are affixed thereto and are a part of that same exhibit.

(The document indicated was thereupon marked defendants' Gordon exhibit 6 for identification, and was handed to the witness.)

A. Yes?

Q. Now, you say you have compared an index of all commodity prices with an index of the price of "The Product?"

A. Yes.

Q. Will you look first at the first sheet appended to and a part of Defendants' Gordon's exhibit 6 for identification, and tell us what that is?

A. That is an index of all wholesale commodity prices, prepared by the Department of Labor, Bureau of Labor Statistics of the United States. This index is upon a 1913 basis; that is, 1913 equals 100 percent.

Q. This index that you are referring to is one prepared by the United States Bureau of Labor Statistics?

A. Yes, the figures shown upon that table are taken from the United States Bureau of Labor Statistics, Wholesale Price Bulletins. [fol. 1110] Q. Will you explain to us so that we will know at this time, and during the balance of your testimony, just what an index—a price index is, and how it is made up?

A. A price index is made to facilitate comparisons of prices of various commodities. Because of the inherent differences in magnitude and in price level of these commodities, it is a common and well recognized method of price comparison and is used by practically all Governmental agencies, trade papers, research organizations, and others who have occasion to make price comparisons.

Mr. Johnston: Now, referring, Mr. Gordon, to this chart so that we may understand this a little more fully.

Q. Under the first column, which is headed "1913," appears "100;" what does that represent?

A. That means that the average price of all commodities in the month of January, 1913, was one hundred percent, or equal to the average price of all commodities for the year 1913, which is the base or 100 percent.

Q. And is the taking of 1913 as the base, a method of comparison in common use by the Government, and by other statistical agencies?

A. The choice of a base year depends upon the normality of conditions and prices in that year.

During the period under consideration, from 1913 to 1923, the years 1914 to 1919 were years of unusual conditions, incidental to [fol. 1111] the war.

The years 1919 to 1923 were years abnormal in their conditions, immediately following the close of the war.

Now, this leaves the year 1913 as the only year in the period which was not affected by abnormalities incidental to the years of the war, and immediately following its close. 1913 may not in all cases be a normal year, but it is the year more nearly normal throughout this period.

This fact is recognized by the Bureau of Labor Statistics in their use of the year 1913 as a base, and also by the Department of Commerce in its index numbers appearing in the publication, the Survey of Current Business.

Q. That is a title, is it not,—“Survey of Current Business?”

A. Yes, sir. This index of all commodity prices was prepared and is placed by that Bureau upon a 1913 base; and it is made up of the wholesale prices of 404 commodities of all types, food, agriculture products, clothes and clothing, etc.

Q. Well, you have a list of those later, have you not?

A. I have a list later.

Mr. Johnston: Before we get into those, Mr. Gordon, will you explain a little more fully now, so that we may understand this first

statement or list, which is attached as the first list attached to De-
[fol. 1112] fendants' Gordon's exhibit 6 for identification.

Q. You have explained that 1913 is taken as the base?

A. Yes.

Q. By the Government in preparing this index of all commodity prices?

A. Yes.

Q. Do you regard the taking of 1913 as a base for the comparison of prices of the product of the Maple Flooring Manufacturers Association, as justified from your investigation?

A. I do, yes.

Q. As being the year of greatest normality within this period?

A. Yes, sir. And an additional consideration was the factor that the comparisons were made with indices which were already upon such a base.

Q. Yes. Now, taking the year 1913 as the base, and taking 1913 as one hundred percent, the years subsequent to 1913 are expressed in percentages as compared with 1913, are they not?

A. Yes, sir.

Q. As for example, the year 1914, following, shows ninety-eight, showing that the price in 1914—

A. In January of 1914.

Mr. Johnston: Yes, taking each month.

Q. (Continuing:) —in January, 1914 was ninety-eight percent of the price in January of 1913?

A. No, in the year 1913—the average for the year 1913.

[fol. 1113] Mr. Johnston: The average for the year 1913. That is right.

The Witness: Yes.

Q. The same method is followed throughout each one of these years, is it?

A. Yes, sir.

Q. And that method, I believe you have stated, of adopting one given period or year as the base, and expressing by index figures the comparison of other years, and the months within those years upon that percentage basis, is a method well recognized by economists and statisticians, and by the Government in the preparation of its statistics?

A. It is recognized everywhere.

Q. And its use is necessitated for the reasons that you have given?

A. Yes, sir.

Q. Or one which is easily understandable, in other words, by the proper comparison?

A. Yes, sir.

Q. Or one which is easily understandable, in other words, by the average man?

A. Yes. Well, that index is made up of the all commodity price

index of the Department of Labor. It is made up of four hundred and four wholesale commodities.

Q. Have you a list of those commodities?

A. I have such a list. Here it is. (Producing a document.)
[fol. 1114] Q. I will show you this list, which I will now ask to have marked as Defendants' Gordon's exhibit 8 for identification, and ask you from what source this list is obtained? It is headed, "Commodities used by the United States Bureau of Labor Statistics in Constructing its Index Numbers of Wholesale Prices." Where is this obtained?

(The document indicated was thereupon marked as Defendants' Gordon's exhibit 8 for identification, and was handed to the witness.)

A. This was obtained from the publication, "The wholesale price bulletins" of the Department of Labor.

Q. Do you remember when that bulletin came out?

A. It comes out yearly.

Q. Oh, it comes out each year?

A. Yes, sir, a yearly bulletin.

Q. This is taken from the Bulletin?

A. Directly from the Bulletin, the last Bulletin.

Q. I believe you said in this case, and all other cases, the data taken by you from these sources was carefully considered?

A. Yes, sir.

Q. Both at the time it was taken and when it was transcribed on the typewriter?

A. Yes, sir.

Q. So that the data embodied in Defendants' Gordon's exhibit 8 for identification, represents commodities which were used by the [fol. 1115] United States Department of Labor in preparing its price index, which is the first sheet attached to exhibit 6?

A. Yes, sir.

Q. That is the United States Bureau of Labor?

A. Department of Labor, Bureau of Labor Statistics.

Q. Bureau of Labor Statistics, Department of Labor?

A. Yes.

Q. Of the United States Government?

A. Yes, sir.

Q. Now, have you likewise obtained from the same source,—that is, the wholesale price bulletins of the United States Bureau of Labor Statistics,—their price index of all building material prices during the same period, 1913 to 1923?

A. Yes, I have. That is, the commodities that enter into that are shown on page six of the list of commodities.

Q. On page six of exhibit 8 for identification?

A. Yes, under Group 6.

Q. The group there denominated No. 6?

A. Yes, sir.

Q. Beginning at the bottom of that page and running over to a little beyond the middle of the next page, No. 7?

A. Yes.

Q. This index is made up by the Department on the same basis, taking 1913 as the base year?

A. Yes, sir.

Q. And comparing it in the same way, as to the percentage of [fol. 1116] the prices, during the remaining years, up to and including the first three months in 1923?

A. Yes.

Q. Now, have you also taken the index of prices prepared by the United States Department of Labor Statistics, or the United States Government, Bureau of Labor Statistics for all lumber prices during the same period, from 1913 to 1923, inclusive—or 1913 up to and including the first four or five months of 1923?

A. Yes, sir. That was taken from the same source as the other.

Q. Are the materials shown in that,—or represented in that index shown?

A. They are shown in Section A., Group 6, page six of the list.

Q. Of the list which we have marked for identification Defendants' Gordon's exhibit 8?

A. Yes, sir.

Q. And that is the third sheet attached to exhibit 6?

A. Yes, sir.

Q. Now, the fourth sheet attached to Exhibit 6, is headed, "Index of the Prices per thousand feet, of the product, based upon average prices received by the Maple Flooring Manufacturers Association's members, F. O. B. Michigan and Wisconsin Mills." "During the period from 1913, inclusive, up to and including the first five months of 1923," who prepared this index of prices?

A. We prepared it.

[fol. 1117] Q. And from what data?

A. It was prepared from data secured from the Association records of the Maple Flooring Manufacturers Association. It represents a combination of the prices of 13/16ths by 2¼ inch Clear grade Maple Flooring, 13/16ths by 2¼ No. 1 Grade Maple Flooring, and 13/16ths by 2¼ Factory grade flooring—That is, Maple Flooring.

Q. Yes?

A. The prices on these three grades of maple flooring were the only prices recorded by the Association within this period and represent the largest item of their production.

These prices were combined in the proportions of clear grade fifty per cent, the price of number one grade thirty five per cent, and the price of factory grade fifteen per cent.

The commodities were weighted in proportion to the percentage that they bore of the total production of these three grades. This method of combining prices according to their proportionate volume of production is used commonly in the computation of price indices. It is used by the Department of Labor in computing its wholesale price indices, with which we have made comparisons; these latter indices being weighted in proportion to the commodities production, as shown by the 1919 census of the United States.

I have here four tables and a chart which will show or indicate

[fol. 1118] the adequacy of this combined index, which we have termed, and will in the future term, "The Product."

Q. You are referring now to this drawing or map, together with the four tables appended thereto?

A. Yes, sir.

Mr. Johnston: Which I will ask the reporter to mark Def. Gordon's exhibit 7 for identification.

(The document indicated was thereupon marked as Defendants' Gordon's exhibit 7, for identification.)

Q. As I understand you now, Mr. Gordon, what you are seeking to do is to justify as a basis of comparison the use of the prices of these three commodities, which you state are the principal commodities of the members of the Association, and the weighting of them in the proportions which you have described?

A. Yes.

Q. May I ask you, before we forget it, whether that same principle of weighting commodities according to their proportion of production is used in the preparing the other indices of the United States Bureau of Labor Statistics, as well as those relating to all commodity prices?

A. I think I previously said that that was the same method used by the Department of Labor in compiling their own indices, with which we made comparison.

Mr. Johnston: Yes.

[fol. 1119] A. Now, the first table shows the actual——

Mr. Johnston: Now, you are referring to the table attached to exhibit 7 for identification?

A. Yes, sir. (Continuing:) —shows the actual prices of 13/16th by two and a quarter inch clear grade maple flooring, and are the average prices monthly realized by members of the Maple Flooring Manufacturers Association F. O. B. Michigan and Wisconsin mills.

Q. Those are taken by you from the actual figures?

A. From the records of the Association.

Q. From the records of the Association?

A. Yes, sir.

Q. Showing the average actual price realized during each of those months?

A. Yes, sir.

Q. The second table to exhibit 7?

A. Yes, that shows the same thing for 13/16ths by two and a quarter No. 1 grade. And the third table——

Q. (Interrupting.) Attached to exhibit 7?

A. Yes. —show similar data for 13/ths by two and a quarter inch factory grade Maple Flooring. The fourth table attached to exhibit 7 shows the monthly price of "The Product," that is, the combined price, based upon the average prices realized by members of the Maple Flooring Manufacturers Association, F. O. B. mills Michigan and Wisconsin, that is, the prices of the three grades com-

bined, in the percentages; clear, fifty per cent, No. 1, thirty five [fol. 1120] per cent, and factory fifteen per cent.

Q. What do those three grades—what percentage do they represent of the total products of the members of the Maple Flooring Manufacturers Association?

A. I don't know the definite—that is, the actual figures. It is by far the majority of the total production.

Mr. Thompson:

Q. You mean the three items?

A. The three items, you mean? The three grades are the only grades they have. The three items, you mean?

Mr. Johnston: Yes, the three items, not three grades.

A. Well, those are the three grades that the members of the Association produce.

Q. Now, having shown us these four tables, which are attached to Exhibit 7, the first three of which show the separate prices realized for each of the three items in question, and fourth, the combination of the three, how have you determined that this is a fair representative basis to take for the purpose of price comparison?

A. We have prepared a chart of the actual prices of these three grades, clear, No. 1, and factory, and compared them upon the same chart, and combined the prices of these three grades——

Q. Which you call "The Product?"

A. —which we have called "The Product." This chart——

Q. Is that the one that you referred to as Defendants' Gordon's exhibit 7, for identification?

A. Yes. This chart will illustrate the adequacy of this combination [fol. 1121] bination.

Mr. Thompson: I suppose you have one of these so that you can look at it?

Mr. Johnston: Yes.

Q. Now, before explaining what this chart shows, it will be necessary, Mr. Gordon, for you to explain the principle upon which this and all subsequent logarithmic scale charts are prepared, so that if you will kindly make such explanation, having reference now to Defendants' Gordon's exhibit 7 for identification?

A. This method of charting, or of graphic comparison, is called the ratio chart, or a logarithmic chart. Its use is recognized by the United States Bureau of Labor Statistics, which uses the same form of graphic comparison in its wholesale price bulletins, and in the comparison of accident data.

It is also recognized by the Department of Commerce for all its comparisons.

Q. That is, the United States Department of Commerce?

A. For all its comparisons in its publication Survey of Current Business.

Mr. Johnston: Pardon me right there.

Q. Is it also recognized by statisticians and economists generally?

A. Yes. It is not only recognized but advocated, because other charts which have in the past commonly been used, give a misleading picture of the actual occurrence.

[fol. 1122] The Department of Labor, in its wholesale price bulletins, explains the use of this logarithmic or ratio scale in graphic comparison by referring to an article in its monthly Labor Review, March, 1919, Volume 8, No. 3, pages 20 to 34.

This article was written by Lucian W. Chaney, to explain why the Department of Labor used this method of comparison.

Q. Who is Mr. Chaney, if you know?

A. I do not know who he is. I know who he refers to in the article, but this is, however, a reflection of my thoughts upon the subject, as there contained in the article.

Q. Is he an economist or connected directly with the Department?

A. Well, I don't know.

Q. He is referred to by the Department as an authority upon this subject, is he?

A. Yes, sir.

Q. And you are referring now to the question of the use of the ratio chart?

A. Yes, sir.

Q. Logarithmic chart?

A. Yes.

Q. All right. Will you read into the record what the Department of Labor, quoting Mr. Chaney, says upon that subject?

A. This article is entitled, "Comparison of Arithmetic and Ratio Charts, by Lucian W. Chaney." I will not read it all.

[fol. 1123] Mr. Johnston: No, just enough for your explanation so we will know what you are talking about.

A. Yes.

"The use of charts for the interpretation of statistical facts has been in vogue for many years. Their universal use is due to the fact that a chart usually presents a quick, forceful, and convenient picture of the matter under consideration, whether this be population of cities, wheat production, bank deposits, wages, or industrial accidents. There are, however, certain limitations upon the value of such charts as accurate interpreters of statistical data. Their value depends not only upon the particular kind of graphs employed but upon the specific idea it is intended to convey. For example, the ordinary arithmetic chart is well adapted to express fixed relationships, but when it is employed, either consciously or unconsciously, to denote rate of change in any given series of facts it produces misleading and inaccurate impressions. To express changing relations or rate of change it is necessary to use other graphic methods.

"Probably the best method devised for this purpose is the so-called 'ratio' chart expounded by Prof. Irving Fisher, of Yale University, in the July, 1917, issue of the publications of the American Statistical Association.

"The present paper attempts to compare the ordinary 'arithmetic' [fol. 1124] and 'ratio' charts, to indicate under what conditions each may be employed, and to illustrate the use of the ratio charts as employed by the United States Bureau of Labor Statistics in its studies of accident data (and for all wholesale commodity price bulletins.)"

That is my remark.

"As already noted, in any series of statistical magnitudes there are two matters of interest, (1) fixed relations, and (2) rate of change.

"To illustrate: The population of a city in a series of years was respectively 50,000, 75,000, and 100,000. The fixed relation could then be expressed as the arithmetic difference between them, namely, 25,000 between the first and second years, and also 25,000 between the second and third years.

"On the other hand, the rate of changes could be expressed by the percentage of difference between the populations, namely, fifty per cent between the first and second years, and 33 1-3rd per cent between the second and third years. The first of these expressions brings out the fixed relation while the second directs attention to the rate of change."

"Comparisons of Scales."

"In order to give graphic presentation to these two distinct relations an appropriate choice of scales and graphic methods is essential. This may be accomplished by using for fixed relations the or-[fol. 1125] dinary 'arithmetic' chart constructed on an 'arithmetic' scale and for rate of change the 'ratio' chart constructed on a 'percentage' scale.

"For the purposes of this discussion these charts and scales may be defined as follows:

"(1) An 'arithmetic' chart is one in which the magnitudes are plotted on an arithmetic scale—an arithmetic scale being a series of numbers so spaced that their linear distances correspond to their arithmetic differences.

"(2) A 'ratio' chart is one in which the magnitudes are plotted on a 'percentage' scale—a percentage scale being a series of numbers so spaced that percentage difference is represented by a constant linear distance.

"The following illustration will bring out the fundamental characteristics of each scale:

The Witness: There is a little chart which goes in the above space.

Mr. Johnston: All right. We will take that chart and insert it.

A. (Continuing reading:)

"It will be noted that in the arithmetic scale equal linear distances represent equal arithmetic differences, whereas in the percentage

scale equal linear distances express equal percentage differences. In the case of the arithmetic scale one space represents ten units; in [fol. 1126] the percentage scale one space represents one hundred per cent difference."

"Thus it will be seen that the arithmetic scale is clearly one of fixed relations between the numbers composing it and is useful in measuring and projecting relations of a fixed character. The percentage scale, on the contrary, has constantly changing relations between the numbers composing it and is convenient for expressing rates of change.

"A comparison of arithmetic difference is best accomplished by means of the horizontal bar chart. A 'ratio' chart, as we have seen, is one in which the magnitudes are plotted on a percentage scale.

"Several important characteristics and functions of the ratio chart may be pointed out.

"1st. In a ratio chart a given linear distance on the scale always represents the same percentage change, consequently, the gradient, or steepness of the lines always and inevitably expresses the exact rate of change in any series of statistical facts. Consequently equal rates of change or equal percentages of difference will have the same gradient. If two magnitudes vary ten per cent upward their curves will run parallel however far separated they may be on the chart.

"For example, if one magnitude increases from 10 to 11 while another increases from 100 to 110 the curves corresponding to the change will be parallel, indicating the same rate of change. It is evident that plotting the same magnitudes on an arithmetic scale [fol. 1127] would show ten times the amount of difference in the second case although the percentage difference is identical.

"Fourthly, the ratio chart makes possible a direct and correct comparison of increases and declines. The usual method of expressing changes up or down is to say, for example, that a rise of 50 per cent was followed by a decline of 30 per cent. This mode of expression is used without realization that it involves expressions which cannot be compared one with the other. Comparatively few persons at once recognize that an increase of 100 per cent is exactly balanced by a decline of 50 per cent. Percentages of increase can be properly compared with other percentages of the same sort and percentages of decline are similarly comparable, but no direct comparison can be made between a percentage of increase and a percentage of decline.

"The following simple chart will best illustrate the incomparability of these two series of percentages:

"For purposes of illustration a series of nine magnitudes have been plotted, namely, 100, 200, 300, 600, 800, 600, 300, 200 and 100, each occurring in successive periods of time. It will be noted that, whereas the absolute decreases are in exact reverse order of the increases, the percentage decreases by no means coincide with the corresponding percentage increases.

[fol. 1128] "Thus, from 100 up to 200 is an increase of 100 per cent, while from 200 down to 100 is a decrease of 50 per cent; from 200 up to 300 is a 50 per cent increase, while from 300 down to 200

is a decrease of 33 per cent; from 300 up to 600 is a 100 per cent increase, from 600 down to 300 is a 50 per cent decrease; from 600 up to 800 is a 33 per cent increase, from 800 down to 600 is a 25 per cent decrease.

"Comparison of such series is impossible except by a memory of relations beyond the powers of the ordinary mind or by mathematical adjustment in each case so time consuming as to be out of the question.

"The incomparability of these two series is due to the necessary shift of bases whenever there is a change from increase to decline or the reverse. For example, going up from 100 that number is the base and 200 is reached by a 100 per cent step; declining to the former level 200 becomes the base and 100 is reached by a 50 per cent step. It is evident that in any case where there is frequent reversal the tangle of incomparable percentages would be entirely unintelligible.

"The 'ratio' chart untangles the incomparables and presents the facts directly and accurately and in a form perfectly understandable merely by inspection. It will be evident from the foregoing that the ordinary form of expression fails utterly to convey any proper notion of the real relation of events."

Mr. Johnson:

Q. Now, the ratio chart is the same chart which you have referred [fol. 1129] to in the testimony, and which you show for the chart itself, as the logarithmic scale, or logarithmic chart?

A. Yes, it is the same.

Q. In other words, the ratio chart, so-called, is plotted upon the logarithmic scale?

A. Yes, sir. That is what makes it a ratio chart.

Q. The logarithmic scale is the one which you have described and which Mr. Chaney's article describes, and is the one which is adapted for showing various rates of change?

A. Yes.

Q. And not fixed relationships?

A. Yes, sir.

Q. Now, referring to Exhibit 7, for identification:

A. I would like to bring in a simple example of its application.

Mr. Johnston: All right.

A. Take the price of two dollars, which increased to four dollars; and the price of another commodity which increased from four dollars to eight dollars.

In both cases the increase was one hundred per cent, and the increase in both was equal in its significance as a price change.

Q. And shown upon the logarithmic chart, the rising line of which would indicate the increase of those two commodities would move in unison?

[fol. 1130] A. I did not get that?

Q. I say, to carry your illustration a little further, the rising line

• which would indicate that rise in price, of those two commodities—

A. (Interrupting.) Would be parallel.

Q. Whereas, if stated upon the arithmetic chart, one would be very much higher than the other?

A. Yes.

Q. Therefore, not fairly and correctly presented?

A. No, it would necessitate a mental allowance for that fact.

Q. Now, the so-called logarithmic scale which appears in all these logarithmic charts: Is that a scale which is already prepared, and that you can obtain?

A. Yes, there are various agencies that print graphic paper.

Q. All of these charts are drawn upon that paper?

A. Yes.

Q. So there is no opportunity for error in the preparation of the chart itself, is there?

A. No, sir.

Q. Now, referring to Defendant's Exhibit Gordon 7, for identification: What is it that you are attempting to compare there, for the purpose of ascertaining whether or not the combination of these three grades of lumber is an accurate comparison, or an accurate method of making price comparisons between "The Product" and other commodities?

[fol. 1131] A. It is the purpose of show that the fluctuations in the white line, which represents "The Product" or the combined index, is similar in all cases to the fluctuations in the three grades, and that it adequately represents the fluctuations and the movements of these three grades, which if taken separately would necessitate three comparisons in every case.

Q. Instead of one?

A. Instead of one. It would also necessitate putting on some of these charts six and seven lines, which you would not be able to untangle at all.

Q. Now, taking chart, Defendants' Gordon's Exhibit 7 for identification: It appears there that the white line represents "The Product," and is the combination of these three?

A. Yes, sir.

Q. And the yellow line represents the clear?

A. Yes.

Q. And the read line represents the number one?

A. Yes.

Q. And that the blue line represents the factory?

A. Yes. Those are shown in the legend upon the chart itself. We have done that on all of the charts where we have used colored lines.

Q. Will you state to us now, so that we may have this before us, in reviewing this and other charts, how the figures which are shown upon all four tables appended to and a part of Exhibit 7, are placed [fol. 1132] upon the graphic chart, so as to be represented, instead of by figures, by lines moving up and down?

A. Well, the horizontal direction on the chart is divided into equal sections representing one year. Each of these yearly sections is divided into 12 sections, one for each of the calendar months.

In plotting the original data upon the chart each monthly figure is placed along the horizontal scale by its month and year—

Q. How do you represent that figure on the chart?

A. Just a moment.

(Continuing:) and along the vertical scale by its actual quantity. Now, that is merely done by a point, and the line is drawn through the consecutive monthly points to represent the change in price.

Q. Then what do you do with those 12 lines in which the sector represents the months?

A. These charts are photostats; that is, they are photographs of charts which we prepared, in which the monthly figures—the monthly vertical lines are not shown.

Q. What is the reason?

A. Because with the monthly vertical lines upon the chart it would be an obscure picture.

Q. It would obscure the picture if you had all of these fine lines on it representing the months?

A. Yes.

[fol. 1133] Q. Therefore, after you had placed the points or dots representing the actual price upon the chart, and had drawn a line through those various points—

A. Yes.

Q. (Continuing:) —so as to get the price movement of each commodity during that year, as represented by its 12 months, then in the photograph chart you eliminated those twelve lines?

A. Yes, in order to facilitate reading the chart.

Q. Yes. And the upper space, of course, that is the space running vertically, represents the percentages of increase or decrease?

A. Yes, sir.

Q. In the method that you have indicated and as Mr. Chaney has indicated it in his article?

A. Yes.

Q. Now, looking at Defendants' Gordon's Exhibit No. 7 for identification: will you tell us what that chart shows with respect to the price of these three varieties of maple flooring, as compared with the combination price of the three which you have designated in your chart and in your description as "The Product"?

A. Well, it is apparent from a mere glance at it that the white line fluctuates similarly to the price of the three grades; that is, it is not necessary to take the time to follow it month by month.

Mr. Johnston: No.

A. But in its general trend, from 1912 and 1913 to the middle of 1913, all three grades and "The Product" index had an upward [fol. 1134] trend.

From 1913 to the end of 1915 all had a similar downward trend. From the end of 1915 to the first part of 1919 all had an upward trend. From the first half of 1919 to the Spring of 1920 all had an abrupt rise.

Q. Rise?

A. Rise, increase.

Mr. Johnston: Oh, yes, I see.

A. Followed by an extraordinary fall during the last half of 1920, and practically all of 1921, since which time they have all had an upward trend. I think that is clear.

Q. Now, the spaces between the blue line, representing factory, the price of the so-called product known as "Factory Maple," and the red line, for instance, which represents the number one maple, has that any significance?

A. It has no actual significance except that it shows one upon a higher level than the other.

Q. Due to the fact that one sold at a higher price than the other?

A. Yes, sir.

Q. You, of course, will attempt to make no comparison on this chart between the price of the two?

A. No, sir.

Q. But merely as to the up and down movements of the two?

A. Yes.

Q. So that the only significance upon this chart?—

A. (Interrupting.) Is the similarity.

Q. (Continuing:) —is the similarity in the shape of the lines? [fol. 1135] A. The shape of the curve, and the movements and the fluctuations, yes.

It shows that the index of "The Product" is an adequate representation of the price movements of the three grades.

Q. And you, as a statistician and one experienced in the preparation of charts of this character, are satisfied, are you, that such use of the figures which you have designated as "The Product" is a justifiable use?

A. Yes, if I had not been I would not have used it.

Q. Yes. Now, I might ask here whether all of the charts that will be introduced in evidence in your testimony, or in the testimony of Mr. Grant Keehn, were prepared under the direction of yourself and Mr. Keehn?

A. They were, yes.

Q. And the figures were all checked by you?

A. The charts were checked while they were in pencil and again checked after they were inked in.

Q. Yes. Now, going back then to Defendants' Gordon's exhibit 6, for identification, which is the comparison of the index prices of The Product, as you have just finished describing it, with the United States Bureau of Labor Statistics, of first all commodity prices, second, all building material prices, and third, of the lumber prices, monthly for the period during 1913 to 1923, I will ask you whether or not the figures represented upon these tables appended to exhibit 6, for identification, showing the Department of Labor's Revised all [fol. 1136] commodity price index, all building material price index, and lumber price index, were placed on this chart, exhibit 6, in the same manner that you have testified the prices of the three grades or qualities of lumber were placed on the chart, exhibit 7?

A. Yes.

Q. Done in the same way?

A. Yes.

Q. Will you now then turn to exhibit 6?

A. Yes.

Q. And explain to us what that chart shows with reference to the comparison of the index prices of The Product with the index prices of these other three groups of commodities, indicating how they are designated on the chart?

A. You want me to explain what this chart shows?

Q. Yes. Explain what exhibit No. 6, this chart, shows?

A. Well, this chart shows that all four of these price indices have had a downward movement, of almost the same extent during the last half of 1913, and the entire year of 1914. During the first three-quarters of 1915 the all commodity index and the all building materials index had a slight upward trend, while the lumber index did not rise but maintained the low level which it had reached in the last quarter of 1914.

The Product index on the other hand continued to decline steadily until the last quarter of 1915, with the all commodity index and the all building materials price index rising, and lumber prices main- [fol. 1137] taining their level.

At this point it would not seem that had the Association had control of prices they would have allowed or let their prices remain upon a relatively low level.

In August of 1915 the all building materials, and lumber indices began a sharp advance, which was followed a month later, in September, by a sharp advance in the all commodity price index. The index of The Product, however, was the last to feel this upward movement, which did not occur until October, at which time it did not move up at as rapid a rate as was the advance in the other three indices. A slight re-action was felt in all four of the indices in the second quarter of 1916, but the upward movement was continued again in the third quarter. This culminated for all of the indices in the middle of 1917, shortly after the outbreak of the war.

In the case of the all commodity index, all building materials price index, and the lumber price index, the reaction which then occurred was short-lived; whereas, in the case of The Product price index the reaction continued throughout the first quarter of 1918, at the same time that the other indices were advancing to higher levels. The prices of The Product, that is, of the white line, advanced sharply in the second quarter, while the other three indices maintained their steady upward movement.

During the last half of 1918 and first quarter of 1919, the all [fol. 1138] commodity price index and all building materials price index declined slightly, while the index of lumber prices, after a momentary re-action, advanced slightly through the last quarter of 1918 and the first quarter of 1919.

The Product, like the all commodity price index, and the all building materials price index, declined slightly throughout the last quarter of 1918, and the first quarter of 1919.

The all commodity index resumed its upward trend again in February, 1919; lumber in March of 1919, and all building materials and The Product in April. This sharp advance was continued for all of the four indices during the remainder of 1919, except for a slight reaction lasting for only a few months in the last half of 1919. This reaction was felt to the greatest extent by all commodities and to a lesser extent by all building materials, lumber and The Product respectively.

This reaction, however, was only momentary, and the sharp upward movement was again resumed by all of the indices, and culminated in the high point in March, 1920, for lumber, April for all building materials, and the Product, and May for the all commodity price index.

During the remainder of the year 1920 all of the indices declined sharply. This sharp decline, however, was broken by a momentary slackening in the third quarter of the year. The decline continued throughout the first half of 1920, although less sharply.

[fol. 1139] Q. 1920?

A. 1921. Excuse me.

Q. 1921?

A. Yes, 1921.

Q. Yes?

A. All commodity prices beginning with the middle of 1921 began an extended sidewise movement, which lasted until January of 1922. Save for the all commodity index, the Product was the last to reach its low point and the last to recover from this drastic decline.

The lumber index recovered from the depression and again moved up in August, all building materials in September, and the Product in October. This brief upward movement for these three latter indices was followed by a reaction in the last month of 1921 and the first quarter of 1922. From the first quarter of 1922 to the second quarter of 1923 all of the four indices have continued to advance with only a slight easing off in the last quarter of 1922.

Now, a study of the movements of the four indices reveals the fact that during the years 1916, 1917 and 1918, and the first half of 1919 the price levels of the four indices were dissimilar. The index of all commodities prices was on the highest level, and the index of all building materials prices upon the next highest level, followed by the index of lumber prices and with the index of the Product upon the lowest level.

During the last half of 1919 this relationship changed. The [fol. 1140] Product advancing to the highest level, all building materials to the third highest level and all commodities upon the lowest level.

A study of the indices themselves, that is, the commodities which make them up, will explain this relationship. Maple flooring is a specialized product and cannot be used for a variety of purposes,—its sole outlet being for flooring purposes in building construction. Lumber, on the other hand, is a less specialized product, although the major proportion, it has been estimated sixty per cent, of all lumber goes into new building construction. There are also a

variety of other uses, such as for boxing, crating, ship building and such outlets for lumber. All building materials is a still less specialized group. Many of the products making up this index are used in a variety of industries, and in addition many of them are made from raw materials, such as iron and steel, which, if the prices are not attractive will be diverted and processed into other commodities. The all commodity index has no specialization, being made up of all manner of commodities and will be influenced by an increase or decrease in the amount of building in the United States only to the extent that those products used in the building industry make themselves felt in the general average of the 404 commodities which are included in the index.

Now, we have made an investigation to determine exactly, or as [fol. 1141] nearly so as possible just,—and in order to be able to demonstrate that the demand for maple flooring was dependent upon the volume of new building construction in the United States—

Q. Well, before you go into that, Mr. Gordon, I think you have finished now your exposition of this chart, Exhibit 6?

A. Practically, yes.

Q. Except for your explanation of certain of the movements—

A. Yes.

Q. —therein shown?

A. Yes.

Q. And for an explanation of those movements it will be necessary to make some study of the relationship between building in the United States and The Product?

A. Yes, sir.

Q. And the price thereof?

A. It will be necessary to digress from the immediate subject of price comparisons."

(Defendants' Gordon Exhibit 6 for identification was received in evidence as Defendants' Gordon Exhibit 6.)

(Defendants' Gordon Exhibit 7 for identification was received in evidence as Defendants' Gordon Exhibit 7.)

(Defendants' Gordon Exhibit 8 for identification was received in evidence as Defendants' Gordon Exhibit 8.)

"Mr. Johnston: Now, I think, Mr. Gordon we had gone up to the point of examining and explaining Defendants' Gordon's exhibit 6.

[fol. 1142] Q. Have you anything further to add to the explanation of the exhibit, of that chart?

A. Well, I was on the point,—rather I had pointed out the difference in fluctuation between the level of these four commodities during the period from 1916 to 1919, and from 1919 to the present time.

I had shown that the Product is a specialized commodity, dependent upon the volume of building constructed in the United States for its demand; that the other three commodity indices are all of a less specialized nature. And I have stated that we had made a study in order to determine for certainty that the demand for maple floor-

ing was dependent upon the volume of new building construction in the United States, and that that demand would offer adequate explanation of the reversal of price level of these four price indices.

Q. By the "reversal of price level" you mean the reversal which took place from 1919 to 1921?

A. Yes, the reversal of order.

Q. Now, what did you do in making this study to show the relationship between the demand for building materials or the volume of building, and the price of The Product?

A. Well, there were two series of data on the volume of building construction in the United States.

First, there were data available on the number and value of building permits granted in selected cities in the United States, and secondly, there were data available upon the number and value of building [fol. 1143] ing contracts awarded in the United States.

This latter data were compiled and are compiled by the F. W. Dodge Company, with headquarters in New York City. These two series of data were available in number of buildings. It was obvious that the number of buildings was an unsatisfactory index of the volume of building, as it would represent the demand for materials and labor necessary for that production. This because no differentiation existed between the buildings, a two-story family dwelling and a twenty story office building; whereas, in actuality there was an enormous difference in the amount of material and labor going into their construction. These two series of data were also available in dollar value.

Q. Just what do you mean by "dollar value." Just explain a little more what you mean by dollar value?

A. By "dollar value" I mean the figures upon building construction were expressed as millions of dollars of building. These figures were also inadequate because no differentiation was made—no allowance was made for the difference in the cost of materials and labor from one period to another. That is, one thousand dollars' worth of building in 1913 represented a far greater physical quantity of building than one thousand dollars' worth of building in 1920, at the peak of prices.

There were figures on square feet of floor area of contracts awarded in the United States available. These figures, however, were only for a limited period, from 1919 to the present time.

[fol. 1144] Q. 1919?

A. Yes, 1919 to the present time.

Mr. Johnston: Oh, yes, that is right.

A. The F. W. Dodge Company not having compiled them for the time previous to that date. These three kinds of data were all that were available and it became necessary to use the dollar figures, or the value figures of building construction and make allowance, or correct them for those fluctuations caused by variations in the prices of material and labor.

The series chosen to correct were F. W. Dodge & Company's value of contracts awarded, rather than permits issued or permits granted

and were used because of two considerations. As building permits are frequently issued for construction that never materializes, or if it is actually constructed, not for a considerable period after issuance of the permit. On the other hand contracts awarded represent actual construction, which will be commenced within a very short time after the contract is let. Secondly, the figures on permits issued in selected cities represent building in cities only; whereas, the figures of contracts awarded represent building in both cities and country.

Since it was necessary to deflate these value figures in order to show the physical quantity of building, an index was secured of the cost of building constructions. This index was one first developed by the Federal Reserve Bank of the New York District and later used by Col. Leonard P. Ayers, Vice President of the Cleveland Trust [fol. 1145] Company, of Cleveland, Ohio, in his monograph, "The Prospects for Building in American Cities," published in June, 1920.

This index is also used by the Association of General Contractors of America, of Washington, D. C., who compile and publish it currently in their publication *The Index*. The figures were secured from this latter source.

Q. Well, what do you mean by "the latter source?"

A. The Index.

Q. Oh, The Index?

A. Yes.

Mr. Johnston: All right, proceed.

A. The Index of construction costs is made up by a combination of two separate indices, one for the cost of materials and one for the cost of labor. These two indices are combined in the proportions of 60 and 40. That is, in the proportions that these two costs bear to each other, in the typical construction job. The materials index is that of the United States Bureau of Labor Statistics index of all building materials.

The data for the labor index is secured from wage statistics compiled and published by the Bureau of the Department of Labor. And in the construction of this labor index the wages of the building artisans was weighted twice the wages of the building laborer. Having thus secured—

Mr. Johnston: Just a moment at that point.

Q. You said sixty and forty?

[fol. 1146] A. Yes.

Q. Sixty represents material and forty the labor?

A. Yes. Having thus secured an index of the cost of building construction, it was used to deflate the index of the value of building contracts awarded. Both indices were upon a 1913 base, and it was necessary only to divide,—or merely to divide the index of the value of contracts awarded in the corresponding months by the index of the cost of building construction. Having then secured an index of the physical volume of building construction in the United States we compared that index, its movements and fluctua-

tions with the movements and fluctuations of an index of new orders booked by the members of the Association.

This index of new orders booked represents the demand, as expressed to members of the Association for its product.

Q. Where did you get that information or that data, from which you prepared the new orders booked?

A. I would rather go back just a moment.

Mr. Johnston: All right.

A. I have a chart; I have prepared a chart and tables to accompany it, showing the value of building contracts awarded before and after deflation by the cost of construction index.

Q. Now, I show you this table which we will ask to have marked Defendants' Gordon exhibit 9, for identification, together with the [fol. 1147] four tables which accompany the same, and ask you whether or not that is the chart and the table accompanying it?

(The document indicated was thereupon marked as Defendants' Gordon's exhibit 9 for identification, and was handed to the witness.)

A. Yes.

Q. The one that you have just referred to?

A. Yes, this first table contains the actual figures on the value of building contracts awarded, 1912 to 1923, as secured from data of the F. W. Dodge Company, in thousands of dollars, monthly for the entire period.

The second table contains the index of the cost of building construction, secured from the publications of the Association of General Contractors of America. The Index is the name of the publication. And it is their index of construction costs which we used to deflate the previous table.

The fourth table contains the corrected index which represents the volume of building contracts awarded in the United States, upon an index number basis 1913 equalling one hundred. The method used in the deflation is illustrated at the foot of the table.

Q. That is the fourth table?

A. Yes, this last one.

Q. Yes.

A. Upon the chart of exhibit 9 the red line represents the value of new building contracts awarded in the United States. The white line represents this same data after correcting for the variations in cost of constructions. A glance at the chart will show a practical similarity in movements before and after correction, and a mere [fol. 1148] change of level rather than of movement.

Q. In other words, this chart, exhibit 9 for identification, is shown for the purpose of demonstrating that this so-called deflation, in order to arrive at the volume of new building contracts, and in order to take account of the decreasing purchasing power—decreased purchasing power of the dollar, does not change in reality the movement at all?

A. No, sir.

Q. Or substantially not at all, is that right?

A. Yes, sir.

Q. And you regard such correction as necessary in order to present a true picture of this situation?

A. I do, yes, a true picture of the physical volume of building.

Q. Yes. Otherwise you would have in there an element of error, if you used merely the figures of building contracts awarded?

A. You mean value of—

Q. Value of building contracts awarded, in that it would include the fluctuations in the price?

A. Yes, sir.

Q. That is the price, represented in part by the decreased purchasing power of the dollar?

A. Yes, sir.

Q. That is during this entire period?

A. Yes, sir.

Mr. Johnston: Just a word on the source of this data.

Q. Is this report or this publication of F. W. Dodge & Company a recognized source of information?

A. Yes, it is.

[fol. 1149] Q. That is, to those engaged in the building trades of this country?

A. It is a service which the F. W. Dodge Company supplies to contractors and builders throughout the country, and is recognized by them as authoritative and complete.

Q. This publication The Index, is that also a publication—

A. That is a publication of the Association of General Contractors of America.

Q. —which is regarded as authoritative upon the subject that it covers?

A. Yes, throughout the building industry.

Q. You had occasion, I believe you said, to make a survey of this subject sometime ago?

A. Yes, sir.

Q. Independent of this investigation that you have made here in this case?

A. Yes, sir.

Q. And you went into the subject quite exhaustively at that time?

A. Practically the same subject, yes."

(Defendants' Gordon Exhibit 9 for identification was received in evidence as Defendants' Gordon Exhibit 9.)

"Q. Now, you were talking about a comparison of the orders booked by the members of the Maple Flooring Manufacturers Association, that is to the volume of new building contracts awarded, were you not?

A. Yes, sir.

Demand for maple flooring must of necessity be expressed by placing an order for such flooring with the manufacturer. Such

orders are new orders booked. We have compared an index of the [fol. 1150] volume of new orders booked in thousands of feet of members of the Maple Flooring Manufacturers Association with the index of the volume of new building construction in the United States.

Q. Is that comparison shown upon this chart which I show you?

Mr. Johnston: We will ask that this be marked Defendants' Gordon's exhibit 10, for identification, together with the tables accompanying the same.

(The document indicated was thereupon marked as Defendants' Gordon's exhibit 10 for identification, and was handed to the witness.)

A. The index of the new orders booked by members of the Association was made from data secured from the records of the Association. This date is for fifteen members of the Association only. The reason for the use of data for fifteen members only was necessary because the membership of the Association varied in number from one time to another throughout the period 1913 to 1923. That is, some manufacturers were members only for a portion of the period.

It was obvious that had the new orders booked of all of the members of the Maple Flooring Manufacturing Association been used fluctuations would have been included, which were caused by variations in the number of manufacturers, and not variations in the demand for flooring.

Upon investigation of the records of the Association it was found that there were fifteen manufacturers of maple flooring who had [fol. 1151] been members of the Association continuously throughout the period.

Q. You mean by that members of the present Association or Associations that preceded it?

A. Associations that preceded it and the present one.

Q. In referring to the Association in that sense——

A. I mean a continuous organization.

Q. —you are referring to all of the organizations under this same name, of which Mr. Keehn has been the secretary?

A. When I refer to the organization I mean the organizations that have existed under that name.

Mr. Johnston: I see. Go ahead.

A. In order to show that the data for the fifteen members represent fluctuations that would have occurred had the entire membership of the association been homogeneous throughout the period a table and chart were prepared comparing the volume in thousands of feet of production, shipments, new orders booked, unfilled orders and stocks on hand for the homogeneous group of fifteen continuous members and for the present membership of 22.

Mr. Johnston: This chart, together with the two tables attached thereto, one being the statistics of production, new orders, unfilled orders, stocks on hand and shipments in thousands of feet, the other

a list of the fifteen so-called identical members, I ask to have marked Defendants' Gordon's exhibit number 11 for identification.

(The documents indicated were thereupon marked Defendants' Gordon's exhibit 11 for identification.)

Q. Now, if you will go ahead and explain the tables and also [fol. 1152] the chart?

A. This comparison for the period from August, of 1921, to March of 1923, that is, for the entire period in which the present membership of 22 has existed, is shown on this chart. It will be seen—

Q. Exhibit number eleven, you mean?

A. Exhibit 11, yes.

A cursory glance at this chart will show an identical fluctuation in all these statistics throughout this period.

Q. Namely, in production, shipments, new orders booked, unfilled orders and stocks on hand?

A. Yes, sir. And offers an adequate indication that had the membership—the entire membership of the Association been homogeneous throughout the period the fluctuations in the statistics would have been identical with the fluctuations of the fifteen members, which we have used.

Q. Now, referring to the first table which accompanies the chart, being a table of the statistics of production, new orders, unfilled orders, stock on hand, and shipments in thousand feet, of the identical fifteen members, and of the present 22 members, from what source was the information contained in that table obtained?

A. It was obtained from the records of the Association.

Q. And compiled by you?

A. Yes.

Q. And is the same true of the list of fifteen constant members, so-called?

A. Yes, sir.

Q. That are the fifteen who were used by you?

[fol. 1153] A. Yes, sir.

Mr. Darby: It is correct?

Mr. Johnston: He testified that this data is all correct.

A. And been checked.

Q. And that applies to every table and exhibit?

A. Yes, sir.

The fifteen members represent on the average approximately sixty-seven per cent of the total of production of the Association.

Q. Yes?

A. Or the same proportion that their membership is of the total membership.

Q. Will you now then refer back again to exhibit 10 for identification and to the two tables which accompany that exhibit, and just briefly state what those two tables show?

A. The first table shows in thousands of feet the quantity of new

orders booked monthly from 1912 to 1923, inclusive, for all flooring by the fifteen identical members of the Maple Flooring Manufacturers Association.

Q. From what source was that data obtained?

A. From records of the Association.

Q. Yes. What is the second table?

A. The second table is an index of data in the previous table.

Q. Prepared in the same way that you have prepared all of these other indices, as you have described them?

A. Yes, upon a 1913 base, 1913 equalling 100, and is the index shown in exhibit 10, for identification.

Q. Now, referring to Exhibit 10, wherein you have portrayed the figures shown upon this index, as you have just described it; [fol. 1154] will you explain exhibit 10 to us, please?

A. This chart was not the chart which we finally used for our comparison. It was our opinion that the data should be corrected for seasonal variation.

By "seasonal variation" in any series of data I mean the regular recurrent oscillations within the calendar months of the year. Seasonal variation is caused by two primary factors. First the difference in days between months, and the difference in the number of working days.

The second factor is that of climatic conditions. This latter cause is the primary cause of seasonal variation in the construction industry. During the Winter months there is regularly a small amount of building because of weather conditions; while on the other hand, during the Spring, Summer and Fall a high level of construction is regularly maintained.

An example of the first cause for seasonal variation is found in the month of February, which has only 28 days. Because of this statistics of production and new orders booked, unfilled orders, etc., are regularly smaller in quantity than during the preceding month of January, which has 31 days.

It was obvious then that seasonal variation did exist and should be removed from the data.

The method used in determining the seasonal variation in both the volume of building construction and in the volume of new orders booked was to take the total for each of the calendar months, in the period 1913 to 1923 and express this total as a per cent of 1/12th the total for all months of the entire period; that is, to express each calendar month's total as a per cent of the average monthly total. Thus 12 percentages were secured, one for each of the calendar months, in terms of the average month. These percentages were then adjusted so that their total was 1200 per cent or their average 100 per cent.

This adjustment was an extremely small amount, being in the case of new orders booked 7/100 of a per cent, a negligible factor.

I have here an example of this method, as used, to determine seasonal variation for the new orders booked, and for production of the fifteen identical members of the Association.

Mr. Johnston: I will ask that this table showing the computation of seasonal variation be marked Defendants' Gordon's exhibit 13 for identification.

(The document indicated was thereupon marked as Defendants' Gordon's exhibit 13, for identification.)

Q. Now, were you through with your explanation of this?

A. Yes.

Q. Now, is this method of arriving at the seasonal variation one that is well recognized by statisticians?

A. Yes, it is.

Q. And is it usual to correct such tables as those under discussion in this case, that is, of production, new orders booked, etc., for seasonal variation?

A. Yes, it is, very usual to correct various sorts of data for seasonal variation.

Q. Now, if I understood you correctly this chart which we have had marked for identification Defendants' Gordon's exhibit 10, to-[fol. 1156] gether with the accompanying tables, shows the relation of new orders booked to the volume of new building contracts awarded in the United States before making allowance for this seasonal variation, Mr. Gordon?

A. Yes, sir.

Q. Which you have referred to?

A. Yes.

Q. Now, have you prepared a chart showing the same matter after making the correction for seasonal variation?

A. Yes, sir.

Q. Is this chart, which I show you, and which I will ask to have marked Defendants' Gordon's exhibit 12 for identification, together with the two tables accompanying the same, the chart representing the relation of new orders book, the volume of new building, and contracts awarded, after making allowance for seasonal variation?

(The document indicated was thereupon marked as Defendants' Gordon's exhibit 12 for identification, and was handed to the witness.)

A. Yes, sir.

Q. This is the chart then, exhibit 12, which expresses, in your opinion, the final corrected relationship?

A. Yes, sir.

Q. Of these two indices?

A. Yes. Before I go on I would like to say a little bit more about the seasonal variation.

Mr. Johnston: Go ahead.

A. On the uncorrected chart, the exhibit—what is the number?

Mr. Johnston: No. 10.

A. Exhibit 10. It can clearly be seen that such a variation exists [fol. 1157] in both series, particularly in the months of January and February, where in each case the curves on the chart drop to a very low level.

There were other methods which could have been used to determine the seasonal variation, but they were so complicated and technical that it was our opinion that they should not be used, since the difference in result would be negligible.

However, we computed indices of seasonal variation by the method of link relatives, which was the most accurate of these methods, and tested the figures of seasonal variation which we secured by the method I have outlined. The difference between the results of these two methods was less than one per cent which was a negligible factor. I do not think I have forgotten anything else now.

Mr. Johnston: All right.

Q. Now then, is there anything else you want to point out in this exhibit 10, which is the chart showing the relationship of new orders booked to the volume of new building contracts awarded before correction?

A. No, sir. The method of actually correcting the data was to divide each month's figure by the corresponding monthly figure of the seasonal variation and thus secure the corrected data.

Q. What practical effect does that correction have, as to the seasonal variation, upon the chart which is identified as exhibit 12?

A. The practical effect is to remove the recurrent regular and normal seasonal movements and to retain only those movements caused by an actual difference in the quantity unusual for that period of the year or that particular month.

Q. Can you illustrate that? That is rather involved. Can you [fol. 1158] illustrate that by reference to these two charts, exhibit 10 and exhibit 12?

A. I think so.

Q. All right, please do so. You can look at mine for No. 10, and you have yours for No. 12.

A. All right. Take the red line—

Q. Referring now to exhibit 10, for identification?

A. Referring now to exhibit 10. In the month of December and January—

Q. What year, 1913?

A. 1913 and 1914.

Q. Yes?

A. In the months of December, January and February the index reaches a low level. In the corrected chart, exhibit 12—is that right?

Q. That is right.

A. —in December of 1913 and January of 1914, the chart reaches a higher level than the months previous and following.

Q. You do not mean the chart? You said the chart reached a higher level?

A. Well, the figures upon the chart.

Q. The figures upon the chart?

A. Yes, sir, the figures upon the chart reached a higher level.

Q. And that is explained by what fact?

A. Well, that is explained by the fact that normally in these months the volume of building is lower than at other months of the

year. Its failure to reach as low a level as normally reached indicates a relative increase. Is that understandable?

Q. A relative increase in what?

A. Over what is normal in that month.

Mr. Johnston: I see. All right. Go on now to something else. [fol. 1159] Q. Well, the net result of the correction is to remove those variations from the picture which result solely from the so-called seasonal variations?

A. Yes, sir.

Q. And to, therefore, give you a more accurate picture of the real movement of new orders booked and of contracts awarded?

A. Yes, sir.

Q. That is, the movement which is uninfluenced by purely seasonal variations?

A. Yes, sir. A glance at the two charts will show the same thing, whichever chart you use. It will show the dependence of the demand for maple flooring upon the demand for building in either case. But it gives a more accurate picture than the uncorrected index.

However the same conclusion would be reached by a study of the uncorrected one.

Q. Yes. Now, going to the corrected index, that is, exhibit 12, for identification, and the two tables appended thereto; will you state first what those two tables show, and then explain the chart to us?

A. The first table shows the index of new orders booked by the identical fifteen members of the Maple Flooring Manufacturers Association monthly from 1912 to 1923, corrected for the factors of seasonal variation.

Q. This table is made up in the same way that you have made up the other index tables?

A. Yes, sir. The indices of seasonal variation is shown at the head of the table and are the figures which were used in dividing the uncorrected index for the respective months in order to secure the correct index, which appears below the indices of seasonal [fol. 1160] variation upon the table.

The second table is an index of the volume of contracts awarded in the United States monthly, 1913 to 1923, inclusive, corrected for seasonal variation. It contains corresponding data to the table preceding it.

Q. Now, you have expressed then the figures shown on these two tables in the chart, exhibit 12 for identification, have you not?

A. I did not get that?

Q. You have expressed the figures shown upon these two tables, which you have just described in the chart, Defendants' exhibit 12 for identification?

A. Yes, sir. Those figures in the chart are the two tables plotted on the chart there.

Q. Will you explain that chart so it will be a little more understandable than the mere inspection of it?

A. The red line represents the volume of new building contracts awarded in the United States, and the white line the volume of new orders booked by members of the Association.

In the years 1913 and 1914 both indices had a slight downward trend. During the year 1915 both of them had a sharp upward movement. In the year 1916 the trend continued up. In 1917 the trend of both indices was downward. And except for a brief and sharp rise in the early part of 1918 in both indices the trend was downward throughout the year 1918.

Beginning in 1919 both curves advanced sharply and again declined throughout the year 1920, reaching their low points simultaneously in the month of December, 1920, and since that time both have advanced steadily.

[fol. 1161] That in major movements indicate what the chart shows.

Q. Now, what does this chart show to you as a statistician and economist, as to the dependence of new orders booked upon the volume of building construction in the United States?

A. It shows that as the volume of new building construction in the United States advanced or increased or decreased the volume of new orders booked by Association members advanced—increased or decreased in a corresponding manner.

It shows the red line to be the cause and the white line to be the effect, and demonstrates clearly that the members of the Association are dependent for their demand for maple flooring upon the volume of new building construction in the United States."

(Defendants' Gordon Exhibit 10 for identification was received in evidence as Defendants' Gordon Exhibit 10.)

(Defendants' Gordon Exhibit 11 for identification was received in evidence as Defendants' Gordon Exhibit 11.)

(Defendants' Gordon Exhibit 12 for identification was received in evidence as Defendants' Gordon Exhibit 12.)

(Defendants' Gordon Exhibit 13 for identification was received in evidence as Defendants' Gordon Exhibit 13.)

"Q. Now, having discussed the question of the dependence of new orders booked by members of the Association upon the — of [fol. 1162] building construction in the United States, will you go back to Defendants' Gordon's exhibit 6, and point out, if there is anything that you desire to point out there, the relationship of the dependence or the importance of the dependence in the reading of this chart, Exhibit 6?

A. The purpose of determining the dependence of the demand for maple flooring upon the volume of building construction in the United States was to explain the change in price level as shown by the chart exhibit 6.

During the years 1916, 1917 and 1918, when the index of the Product was upon a lower relative level than the other three indices, there was very little new building construction in the United States because of restrictions placed upon that industry.

As a result this failure of demand for flooring inevitably caused its price to stay upon a low level. The continuance of this low volume of building, during the years 1917 and 1918 created a shortage of building, which at the close of the war and the removal of

restrictions upon the industry was allowed expression and explains the tremendous increase in demand for flooring and other building materials during the period 1919 to date. This shortage and the consequent high level of building since 1919 is shown in a chart.

Mr. Johnston: That is exhibit 14.

A. Exhibit 14.

Mr. Johnston: Well, it has not been offered yet. Say "in a chart."

[fol. 1163] A. In a chart which we have prepared.

Q. Is this the chart, which I show you, and the tables accompanying the same (showing a document to the witness)?

A. Yes.

Q. Two tables accompanying the same?

A. Yes, sir.

Q. Table and list accompanying the same?

A. Yes.

Mr. Johnston: I will ask that this chart and the table and list accompanying the same be marked Defendants' exhibit 14 for identification.

(The document indicated was thereupon marked as Defendants' Gordon's exhibit 14 for identification, and was handed to the witness.)

A. The table, in the first column, contains the figures of the value of building permits issued in fifty cities yearly, 1900 to 1922, inclusive, in millions of dollars. The second column contains an index of the cost of building construction, the same index as was used in the correction of the tables previously mentioned.

Q. That is, the correction for seasonal variation?

A. No.

Q. Oh, corrections for the decrease in the purchasing power of the dollar?

A. No, the variations in the cost of materials and labor and consequent variations in cost of building constructions.

[fol. 1164] Mr. Johnston: Oh, yes.

A. It is made up in the same manner, upon a yearly base instead of monthly.

Mr. Johnston: Yes.

A. The third column was secured by dividing the first column by the second column, in the manner previously described, and represents the volume of building permits in fifty cities; that is, the physical volume of building.

The fourth column shows the ordinates of the line of secular trend, or the line of trend shown upon the chart, exhibit 14.

Q. For identification.

A. For identification.

Q. In other words, as I understand you, you have done here just what you did in one of the earlier tables and charts?

A. Yes.

Q. You have converted the volume of building permits, expressed in terms of dollars, as shown in the data from which you obtained that information—

A. Yes, sir.

Q. Into volume of building permits? I mean volume of building permits?

A. Yes, we have corrected the dollar value figures—

Mr. Johnston: Yes.

A. In order to show the physical volume.

Q. In order to show the physical volume?

A. Yes, sir.

[fol. 1165] Q. Where did you obtain this data of building in fifty cities, permits in fifty cities?

A. Well, the reason for using building permits in this case rather than contracts awarded, which were used previously, was that building contracts awarded figures were not available earlier than 1912.

In order to show what the normal growth in building was, it was necessary to have a considerable period; that is, from 1900 to date. Data on building permits were the only statistics available.

Q. Where did you get that data?

A. This data, for all the years except 1922, was secured from the monograph of Col. Leonard P. Ayers, vice president of the Cleveland Trust Company, Cleveland, Ohio, the Prospects for Building in American Cities in 1922.

Mr. Johnston: You mentioned that before.

A. This is the same source previously mentioned.

Q. Do you know from what sources he obtained that information, Mr. Gordon?

A. He obtained the figures primarily from Bradstreet's Published Statistics of Building permits. In the cases where he could not obtain them from that source in particular years he secured them by actual correspondence with the Building authorities of the city.

Q. Is Bradstreet's a recognized statistical publication?

A. It is, yes.

Q. And have you examined this data from the point of view of whether or not the cities selected are representative cities of the [fol. 1166] various States?

A. Yes, sir they are. They are representative of the whole country.

Q. And was there any other source from which this data was available?

A. No, sir, there was not.

The figures in 1922, which could not be secured from Col. Ayers' monograph, which was published before they were available, were taken by us from Bradstreet's Statistics of Building Permits. The only deviation from the list of cities used by him was in the case of Providence, the figures for which city were not available. In its place was substituted the statistics on building permits of a nearby city, of the same population, or of practically the same population.

Any error that this interchange might have made would be lost in the total, and was an extremely negligible factor.

Q. Now, you have expressed the figures shown upon this table, upon the chart exhibit 14, have you not, Mr. Gordon?

A. Yes, sir, the list of fifty cities is appended to the chart.

Q. Yes. This chart, by the way, is upon an arithmetic scale?

A. Yes.

Q. And not upon a logarithmic scale?

A. The interest is not in the rate of change, but in the actual [fol. 1167] arithmetic quantity and actual quantity.

Q. The volume, in other words?

A. Yes, sir.

Q. You are not comparing rates here?

A. No, we are not making any comparison with anything else.

We are—

Q. No.

A. We are merely comparing it with itself.

Q. Well, now, will you take this chart and explain the same to us and in connection with that explanation how you arrive at that rising line shown upon the chart, known as the "line of trend?"

A. The irregular line represents the actual volume of building in the United States in the individual years. Through this curve has been drawn a line of trend. This line of trend was computed by the method of least squares, or method of moments, and rests upon a mathematical proposition that there can be only one straight line drawn through a series of data such as to best represent its trend. The actual explanation of the method is so involved and technical that unless it is desired I won't go into it.

Q. Well, can you state whether or not that method of least squares is one which is recognized by statisticians generally?

A. It is. It is recognized, and it is the same method used by Col. Ayers in his monograph previously cited to determine the building shortage in various cities.

[fol. 1168] Q. Do you know whether or not the Government has used that method in any of its published statistics?

A. I am not certain but I believe the Bureau of Labor Statistics used the same method in a volume on Ponce Bulletin No. —.

The method is also used commonly by statisticians and economists to determine the trend of various series.

Q. And is an accurate mathematical calculation?

A. Yes, sir.

Q. Have you written out an explanation of this mathematical calculation?

A. Yes, sir, I have.

Mr. Johnston: It might be advisable, if there is any question about it, to append as an additional exhibit the explanation on this.

A. A short and concise explanation of this method of fitting a straight line to a series of data so as to show its trend is contained in the Review of Economic Statistics, published by the Harvard Committee on Economic Research for 1919, pages 8 to 18, especially page 12, and in a volume entitled Introduction to Economic Statistics, by George R. Davies.

Mr. Johnston: I think I will have that marked as an exhibit, just as a sort of confirming document.

Mark it for identification. I will ask that this be marked De-

fendants' Gordon's exhibit 14-A being a sort of supplement or addenda to exhibit 14.

[fol. 1169] (The said document was thereupon marked as Defendants' Gordon's exhibit 14-A, and is hereto attached and returned herewith.)

Said document was received in evidence.

Q. Now, referring back to exhibit 14, I note that you show this line of trend up to about 1916 and beyond that point you have placed a dotted line, continuing the same general line of trend. What is the explanation of that?

A. In order to determine the normal growth in building or the normal line of trend, it was necessary to take only those years which were normal and not affected by the restrictions and conditions after our entry into the war, until the present time.

The purpose of computing this line and drawing it on the chart was to show what normally would have been the increase or the trend of building in the years 1917 to 1922, inclusive, had there been no restrictions placed upon the industry by the Government causing a shortage, and the tremendous demand after the close of the war when the demand for building was allowed expression.

Does that answer your question?

Mr. Johnston: I think so.

Q. Does the continuing of this line of trend then by the dotted line up to and into the year 1922,—is that a method which is justified—

A. Yes.

Q. From the standpoint of economic statistics?

A. Yes.

Q. Having once determined your line of trend during the so-called normal period?

A. Yes. I have already said that this same method was used by [fol. 1170] Col. Ayers in his study to determine the building shortage, in which he projected the line to show what normally would have been the building, had the unusual conditions incidental to the war not existed.

Q. Now, you have referred to certain restrictions imposed upon building operations?

A. Yes.

Q. What restrictions do you have reference to?

A. During the war, for the purpose of conserving materials, in an aid to our national defense, the Government placed restrictions upon all but the most necessary and vital construction in the United States. I cannot cite offhand the actual dates and restrictions.

Q. Have you reference here to any Government publications which refers in general terms to those restrictions?

A. I think it is in here, but I am not sure.

Mr. Johnston: All right. Just see if you can find it.

A. In Price Bulletin No. 43 of the War Industries Board, en-

titled Prices of Lumber, appear specific restrictions placed upon the manufacture and use of various materials including building materials.

Mr. Newman :

Q. What page?

Mr. Johnston :

Q. Upon what pages of the bulletin?

A. Upon page 36 are cited three specific restrictions; and on page 39 appears another, and on page 41 another; and on page 42 again appears another. And there are a couple of more on page 43.

Mr. Newman: Yes.

Mr. Johnston :

Q. How do those appear?

[fol. 1171] A. They appear under the date.

Mr. Johnston: I don't know as it is necessary to go into that.

Q. You have given reference to the number of the Bulletin where these restrictions are set up?

A. Yes, sir.

Mr. Thompson :

Q. Are those restrictions on manufacturing?

A. Manufacture and use, not particularly manufacture.

Mr. Newman: There was a period of time when you could not ship anything.

The Witness: Yes.

Mr. Johnston :

Q. Now, referring again to exhibit 14 for identification; will you point out on that chart what space upon that chart indicates the so-called shortage of building material?

A. The distance between the jagged line, or the line of volume of building permits, and the line of trend in any year shows the quantity of under or over construction in that year.

It is apparent that in 1916, 1917 and 1918,—or from 1916 to 1918 the volume of building declined to a level lower than at any other time since 1900. The area underneath the line of trend will give you an approximation of the accumulation of building shortage.

Q. That is, underneath the line of trend and within the jagged line?

A. Yes, sir.

Q. That indicates the accumulated shortage?

A. Yes, sir.

Mr. Darby: Beneath the jagged line.

Mr. Johnston: No, within the jagged line, and beneath the line [fol. 1172] of trend, shows the accumulated shortage.

A. Yes, roughly.

Q. Roughly?

A. Yes.

Mr. Johnston: All right.

A. It is apparent then in the years 1917 and 1918 the volume of building declined lower than at any time since 1900. This fact indicates the failure of demand for maple flooring and offers adequate explanation of the comparative low level maintained by the prices of maple flooring in comparison with other commodities as shown by the all commodity index, the index of all building materials prices and the index of lumber prices.

Q. During what period? During that period?

A. Yes, sir, during that period.

Q. Then what further does it show?

A. Then in 1919 it shows that the volume of building more than doubled over the previous year, 1918, and explains the tremendous rise in the price of The Product.

Q. As shown on exhibit six?

A. As shown on exhibit six.

Q. During the years 1919 and 1920?

A. Yes, and early 1920.

Q. Yes?

A. The demand in 1920, because of the—that is, the quantity of building in 1920 declined for the entire year relatively little because of the high level during the first half of the year.

In 1921 and 1922 the volume of building increased tremendously, reaching in 1922 a figure higher than at any time during the period 1900 to 1922.

This explains why the prices of maple flooring, lumber, building materials and all commodities reversed their order or relationship; [fol. 1173] the more specialized of these indices feeling this accumulated demand more than the all commodity index.

Q. And offers an explanation, as I understand you, why from the end of 1918 or until the present time, this specialized product of maple flooring has occupied a relatively higher level than the other three groups of commodities?

A. Yes, because the demand for it was relatively upon a greater level, or higher level than the demand for the less specialized products, the products not so dependent upon the volume of building.

I might point out that this chart, exhibit 14, is upon a yearly basis and not upon a monthly basis. That is, it does not show the monthly figures, but only the yearly total, consequently it does not show the variations within the year which are evident in the exhibits showing the volume of building contracts awarded which have previously been referred to.

Q. Yes; meaning exhibit 12?

A. Meaning exhibit 12, yes.

Q. Well, the purpose of this exhibit 14, as I understand, being to show merely the departure from the normal trend of the volume of building?

A. Building.

Q. By building permits issued?

A. Yes, and to show that the price of The Product was on a lower relative level than the other indices because of the low demand for maple flooring during the years 1917 and 1918, and upon a higher relative level in 1919 and 1920 and to date, because of the shortage of [fol. 1174] building which caused an accumulation of demand for building which was not satisfied in the years 1919 and 1920.

Q. As indicated by the rising line on chart, No. 14?

A. Yes.

Q. In those years?

A. Yes.

Q. That is, the sharply rising line (indicating)?

A. Yes."

(Defendants' Gordon Exhibit 14 for identification was received in evidence as Defendants' Gordon Exhibit 14.)

(Defendants' Gordon Exhibit 14-A for identification was received in evidence as Defendants' Gordon Exhibit 14-A.)

"Q. Now, have we finished this subject, Mr. Gordon, of the comparison of the new orders booked by the members of the Association, to the volume of building contracts awarded?

A. Yes, sir. We have come back to the comparison of the index of the prices of The Product with all commodity prices, all building materials and lumber prices.

Q. That is Exhibit 6?

A. Yes.

Q. Is there anything further now that you want to explain or point out in Exhibit 6?

A. This chart, exhibit 6, indicates that in its major movements the price of The Product fluctuated the same as the prices of all commodities, all building materials and lumber.

The difference in level of price before and after the end of 1919, it has been shown, was caused by the specialization of The Product, which can be used only as flooring in the construction of new building. The changes in the quantity of new building in these periods [fol. 1175] offers explanation of the change in relative price levels of these four indices.

Q. Does the fact of the levelling out, for instance, of the line indicating the price of The Product in 1918 and into the middle of 1919, have any significance, as bearing upon the restriction of building?

A. It has no significance in this comparison.

It is of significance in a further investigation we made into the factors of supply and demand.

Q. Yes?

A. As they are reflected upon this particular product.

Mr. Johnston: Oh, yes.

A. But here it is of no consequence. It shows a similarity of level.

Q. With the other three groups of commodities?

A. Yes.

Q. Were you through with that?

A. Yes.

Q. Now, passing from this subject to the question of the higher relative price of the commodity—The Product, rather, as you have described, it with the price of other commodities during the same period, that is, from 1913 to 1920: Have you made such a comparison to ascertain whether or not the price of The Product was on a higher or lower level than the price of other commodities during that period?

A. Because the price of The Product differed in level from the price index of all commodities it might at first be thought that this deviation was significant and had a bearing upon the possible control of price of The Product.

A mere deviation or difference in price level continuously through [fol. 1176] the period or at any time during the period would offer no basis alone for any conclusion as to price control or manipulation.

The index of all commodity prices, the index of all building materials prices and the index of lumber prices are made up of a variety of different products—prices of a variety of different products, in the case of all commodities, 404 in number.

Now, the index of all commodity prices is an average of these 404 individual prices, by far the largest proportion of which differ throughout the period, or at individual times within the period, from the average of the group. Therefore, if a mere difference is condemnatory or taken as an indication of manipulation or control all of the prices which make up the all commodity index, which differ from the average of the group must be condemned, and to do so would be absurd.

Furthermore, a higher relative peak price, that is, a price at any time reaching its peak, or having its peak upon a higher level than the peak price of other commodities as shown by the all commodity index, all building materials index and the lumber, index, is of no significance in this connection.

A comparison has been made of the relative peak prices attained by The Product of members of the Maple Flooring Manufacturers Association, and other commodities. This table which I have here indicates that there were 21 commodities given in the United States Bureau of Labor Statistics Wholesale Price Bulletins that had a higher relative peak price than did The Product.

Mr. Newman: Maple flooring; the product of maple flooring. [fol. 1177] Mr. Johnston: Well, we have called it here "The Product" Mr. Newman.

Mr. Newman: Oh, I see.

Mr. Johnston: That is a consolidation of the three grades of maple flooring.

Mr. Newman: All right.

A. Now, if this fact alone, that is, the fact of having attained a higher peak price is condemnatory, or is taken as the basis of judgment alone, then it would be necessary to condemn this list of twenty-one commodities, which would be absurd.

This table shows the actual commodity, the peak or the highest price attained during the period 1913 to 1923, inclusive, and the year in which that peak price was attained for the individual commodities.

These price relatives were taken directly from the United States Bureau of Labor Statistics Wholesale Price Bulletins.

Mr. Johnston:

Q. On what basis are they compared with the price of the commodity?

A. Upon the same basis as all of the indices we have used, 1913 equals 100 per cent.

Q. What indices do you refer to, to show the peak price of the Product?

A. I beg your pardon?

Q. What one of these exhibits do you refer to to show the peak of The Product, the peak price of The Product, Mr. Gordon?

A. The peak price of The Product is shown upon the table that is at the foot of the table, in order that a ready comparison might [fol. 1178] be made of its peak price with the peak price of the other 21 commodities.

Q. And that is the price of 397%?

A. Yes sir.

Q. Attained in 1920?

A. Yes. There is one commodity, quinine, which which attained a peak price of 394, and was included in the table as being of the same practical high level.

Q. Well, these figures which appear under the heading "Peak Prices, 1913—100%" are expressed in percentages?

A. Yes.

Q. Taking 1913 as the base, or 100 per cent?

A. Yes.

Q. And if you taken as an illustration Fertilizing Materials, Nitrate of Potash, 1013; that means that in 1916 the price of that product reached 1013, as compared with 100 in 1913?

A. Yes, sir.

Q. And so with each of the other products?

A. Yes, sir.

Q. These being the high points that these products reached in the years indicated in the column following Peak Prices?

A. Yes. It is a mere expression of the price in the peak year, in terms of the prices in 1913. Q. On the basis of 1913 equalling 100 per cent?

A. Yes.

Q. The same relative comparison that you have made——

A. Throughout this study.

Q. (Continuing:) —throughout these studies?

A. Yes."

[fol. 1179] (The table of peak prices in commodities was marked Defendants' Gordon Exhibit 15 and received in evidence.)

"Q. Now, Mr. Gordon, Defendants' Gordon's exhibit 15 is a table comparing the peak price of The Product in the three grades of maple flooring, that you have heretofore referred to, with the peak price of other commodities during the period from 1913 to 1923. Those price relative indices are in each instance for what period?

A. They are the average for that year. They are indicated in the third column. That is, they are the average price for the year and not the monthly price.

Q. Yes. Is there anything further you wanted to say concerning that table, Mr. Gordon?

A. No, sir.

Q. What further comparison did you make of the price of The Product with the price of other commodities?

A. An investigation was made to determine whether the fact of having a higher average relative price over the period 1913 to 1923, higher than the average relative price of all commodities, all building materials or lumber prices was indicative or significant.

Upon investigation it was found that there were 146 other commodities which had an average relative price over the period 1913 to 1922, inclusive, higher than the average relative price of The Product.

These commodities with their yearly price relatives and the average for the ten year period is made up in the table which I have here.

Q. This table which you produce was taken from what source or data therein concerned?

[fol. 1180] A. From the Wholesale Price Bulletins of the Department of Labor, the same source previously used.

Q. Except the information as to The Product?

A. Except the information as to The Product shown at the head of the table, merely for purposes of comparison.

Q. Which was taken from the same source you have heretofore testified to, the records of the Association?

A. Yes.

Q. Or various associations?

A. Yes."

(The table last above mentioned, consisting of 14 sheets, was marked Defendants' Gordon Exhibit 16 and received in evidence.)

"Q. I take it, Mr. Gordon, that the figures appearing under the separate years, 1913, 1914, etc., are the average for each of those years?

A. Yes, sir.

Q. And the average in the last column, the figures under the heading "Average" is the average for the period 1913 to 1922, inclusive?

A. Yes, sir.

Q. And it is that average embodied in the last column of figures with which you are making a comparison?

A. Yes. This list, as I say, contains a list of 146 commodities, at 36 per cent of all the prices which enter into the all commodity index. These prices all had a higher average relative price over the ten year period, 1913 to 1923, than did The Product.

It would appear then that such a difference, that is, a difference in average over the period from that of the other three indices did not offer any basis upon which to condemn or regard as significant the [fol. 1181] higher relative level of The Product during the period which we studied.

Q. By that I take it you mean that the average price of The Product does not indicate any fixation of that price at an unreasonable level?

A. Yes, sir. That fact alone could not be regarded as significant because if so, a fortiori, it would be necessary to regard as fixed the prices of these 146 other commodities.

Q. Now, Mr. Gordon, up to this point you have given us your study of the subject of the price of The Product as compared with the prices of other commodities, and particularly the three groups known as All Commodities, All Building Materials and Lumber, and as a result of that study, will you sum up for us the conclusions which you have derived from that study of the facts as you have given them to us?

A. Well, our investigation indicated that there were but four manners in which the price of a commodity could be fixed.

They could be fixed continuously at an unreasonably low level, at an unreasonably high level, or at a reasonable level. The fourth method of fixation might be sometimes at one of these three levels, and sometimes at another.

It was ascertained and found that to fix the price of a commodity in the first three manners necessitated control of the potential supply of that commodity.

A study revealed the fact that control of the potential supply would require control of any or all of the means of production; that [fol. 1182] is, raw materials, equipment, capital, managerial ability or labor.

It was inconceivable that the members of the Association controlled the capital, managerial ability or the labor supply necessary to the production of this product.

Data was secured which showed that the members of the Association owned or controlled but two per cent of the stand of maple, beech and birch timber in the United States; that is, but two per cent, of the raw material.

It was found that the members of the Association did not control

the equipment necessary to the production of maple, beech or birch flooring.

It was determined in this manner that the members of the Maple Flooring Manufacturers Association did not control the potential supply of maple, beech and birch flooring, control of which supply would have been necessary in order to fix or maintain the price of maple flooring in the first three manners cited.

It was found that a party could not fix the price continuously at an unreasonably high level without control of the potential supply, and that control of this supply was not had or enjoyed by members of the Association.

Had an unreasonable price been secured by members of the Association, it was shown that a special inducement would have been offered for other supply to be produced by agencies outside of the Association.

A study was made which revealed the fact that anyone could purchase the equipment necessary to the production of maple flooring [fol. 1183] for approximately thirty thousand dollars.

Moreover, it was found that on the average, during the nine years, 1912 to 1920, inclusive, there existed 4767 producers of rough maple lumber who could have entered into the production of maple flooring had attractive profits been available by so doing. ✓✓

Data was also secured which indicated that over 80 per cent of the yearly cut of maple timber in the United States was available to be transferred from its other uses into the manufacture of maple flooring had an attractive profit been available by so doing.

In addition it was ascertained that producers of other competing floorings could have entered into the manufacture of maple, beech or birch flooring, merely by purchasing the raw material and running it through their existing equipment. Most significant of all, a list of approximately one hundred manufacturers of maple, beech or birch flooring was secured. This list contained only names of manufacturers who were not members of the Association, and who could have produced a greater volume of maple, beech or birch flooring had the prices been such as to offer attractive profit.

In order to determine whether the prices realized for maple flooring by members of the Association offered any indication of price manipulation, which was cited as the fourth manner of price fixation, or offered any indication of price control, a comparison was made to the index of all commodity prices, all building materials price and prices of lumber.

This comparison showed a similarity in general movements. It was found that the relationship which the relative levels of the four [fol. 1184] price indices bore to each other during the years 1916, 1917 and 1918 was reversed from the latter half of 1919 to the beginning of 1923. This change of relationship was found to be caused by the extreme specialization of maple flooring and its greater dependence for demand upon the volume of new building construction in the United States.

The low volume of building construction in the United States in the years 1917 and 1918 explained the relative low level of the

price of maple flooring during these two years, in comparison with the other three indices. The high volume of building construction in the years 1919 to 1922, inclusive, explained its higher relative level in the latter years.

Finally it was found absurd to regard a difference in extent of price fluctuation, in price level or in peak or highest price attained of themselves as significant or as indicative of price control.

Now, in a number of places I have mentioned the fact that an unreasonably high price would offer a special inducement for the production of additional supply.

Mr. Johnston: Yes.

A. An actual example of this inducement and the resultant increased supply placed upon the market is offered by the condition which existed in the southern pine territory during the period of high prices in 1919 and early 1920.

In the Report of the Federal Trade Commission on War Time Costs and Profits of Southern Pine Lumber Companies, published on May 1, 1922 by the Government Printing Office, Washington, D. C., [fol. 1185] on page 68 the following sentence is found:

"The effect of this period of high prices was to stimulate increased production. Not only did established mills produce to capacity but it is estimated by the United States Forestry Service that during 1919 between eight hundred and one thousand small mills began operations in the Southern Pine region alone."

I would like to also clear up the use of the name of the Association. By that I mean whatever organization which has functioned under the name of "Maple Flooring Manufacturers Association." Among the names contained in Defendants' Gordon's exhibits 2 and 3 it is possible that all the names do not represent present manufacturers of maple flooring.

In the first list secured were found a number of errors made by the publisher.

The lists which have been submitted, however, contain names which, as far as Mr. Keehn and I know, are actually producers of flooring. I just say that in the event that there may be errors in there that we did not know of. The other list, exhibit one, however, is correct in every detail, and actually represents the producers.

Q. Exhibit 2 was taken, of course, from the 1923 edition?

A. Yes, sir, the latest edition.

Q. The latest edition?

A. Yes.

Q. And the same is true of Exhibit Number three?

A. Yes.

Q. Now, from the investigation which you have made up to this point have you found anything which would evidence a fixation of price of maple flooring, birch or beech flooring by the members of this Association or preceding Associations under the same name?

A. No, I have not.

[fol. 1186] Q. You might state, Mr. Gordon, by whom you were employed to make this investigation?

A. By the law firm of Newman, Poppenhusen, Stern & Johnston.

Q. And you might state what your instructions were with respect to the preparation of this data?

A. My instructions were to make an unbiased investigation and report the facts as they were actually found, and analyzed, from an unbiased viewpoint.

Q. And to the best of your ability have you done that?

A. I have.

Q. You have, of course, worked with Mr. Grant Keehn upon the entire investigation, have you not?

A. Yes, sir.

Q. And you have gone over with him the data, the tables and the charts concerning which Mr. Grant Keehn is to testify, have you?

A. Yes, sir.

Q. I will ask you now so it will not be necessary to recall you upon that subject, whether or not you agree with Mr. Grant Keehn, or whether you and Mr. Grant Keehn have agreed upon the conclusions, so far as there are conclusions involved, in the balance of the report?

A. I do.

Q. And you have checked over the data there which Mr. Keehn will testify about, the computations, the figures, the tables and the charts in the same way that you have checked over those charts and tables concerning which you have already testified, and which have been introduced in evidence?

[fol. 1187] A. Yes.

Q. And with the same care?

A. Yes.

Mr. Johnston: I think that is all.

Mr. Thompson: I would like to reserve the right to cross examine later, if it is deemed necessary, after I have had an opportunity to study these exhibits.

Mr. Johnston: I see.

Now, of course, the only difficulty of that is Mr. Gordon will be at Cambridge.

Mr. Thompson: That is why I inquired if you had the other depositions in Boston, if we had to go there to take care of that it could be taken care of at that time.

The Witness: It would be rather hard for me to come out here again.

Mr. Johnston: I might ask you that question.

Q. Mr. Gordon, would it be possible for you to be present at the trial as a witness?

A. It would be extremely difficult.

Mr. Johnston: That is all."

DEPOSITION OF GRANT KEEHN, TAKEN, PURSUANT TO STIPULATION,
AT CHICAGO, ILLINOIS, ON OCTOBER 21ST, 1923

[fol. 1188] GRANT KEEHN, being duly sworn, testified as follows:

Direct examination.

By Mr. Johnston:

I live in New York City. I am employed in the Statistical part of the Securities Department of Goldman-Sachs & Company, 30 Pine Street, New York City. I am the son of George W. Keehn, the secretary of the Maple Flooring Manufacturers Association. I secured an A. B. degree at Hamilton College, Clinton, New York, and then entered the Harvard School of Business Administration, where, upon completion of a two year course I secured the degree of Master of Business Administration. I specialized in statistics while in the Harvard School of Business Administration.

"The course there, however, prescribes a very full study of all of the various functions of business, and during the course I studied, among other things, marketing, industrial management, finance and statistics, economics and lumbering.

"I took a course under Prof. Robert T. Fisher, who is director of the Harvard Forest and who teaches the course in Lumbering, which is a general survey of the lumber industry, and particularly of the features of production. I also secured information as to the source of lumber data while in that course. Other courses that were particularly applicable to this study were: a course in advanced business economics, under Professor Homer B. Vanderblue, who is an economist on the Harvard Committee of Economic Research.

"I took a senior course entitled Commercial Crises under Professor Warren B. Persons, who is, I believe, the head statistician [fol. 1189] for the Harvard Committee on Economic Research. I also had two courses under Professor A. J. Hettinger, who is professor of Statistics there, and also serves in an advisory capacity as to the statistics at the Federal Reserve Bank of Boston."

I took courses under Professor Melvin T. Copeland in Marketing, Professor A. S. Dewing, Incorporation Finance, Professor Cole in Accounting, Professor Callan in Industrial Management, and others. I was on the Editorial Board of the Harvard Business Review and was chairman throughout my second year. This work involved the writing and passing upon material included in the Students' Section of the Harvard Business Review. I was also employed for a short time by the Harvard Bureau of Business Research in connection with the shoe industry, or to be specific, the cost of doing business in the shoe industry. The Harvard Bureau is part of the School of Business Administration.

"The method of instruction in this Business School is that of the Case System. The agents of the Bureau of Business Research collect from actual businesses the facts and problems which are found among various concerns. They write up these facts and figures where there

are any, and they are presented as problems or cases to the students in the school for them to study over and discuss in the class room, and to write reports upon.

"One of the other functions of the Bureau is to make researches into the costs of doing business in several lines of industry.

"Q. You say you did some practical work in the field for that Bureau?

A. My work was connected with a convention of shoe retailers that was held in Chicago. I was employed to explain several of their [fol. 1190] methods that they recommended for shoe retailers, such as stock keeping records, accounting system, and the like.

Q. While you were in the Harvard School of Business Administration, did you make any special study of the subject of Lumber, Lumber Costs, or Maple Flooring, particularly?

A. I prepared a thesis in partial fulfillment of the second year course called Advance Business Statistics. The subject of that thesis was the relation of the maple flooring industry to the business cycle.

In that thesis I attempted to find out what relation if any existed between the movements of the activity in the flooring industry and of business in general. As an indicator of the fluctuations in the activity of business in general, I used the three curves prepared by the Harvard Committee on Economic Research.

I found that the shipments which I took to represent the activity of the maple flooring industry moved in very close accord with the activity of general business, although preceding it by some little time.

Q. That investigation and the preparation of that thesis occupied some time, did it?

A. It occupied portions of my time throughout the second term this last year at the Graduate School of Business Administration."

Mr. Gordon and I were employed by Newman, Poppenhusen, Stern & Johnston to make an investigation of the subject of maple flooring, and particularly the prices charged by the members of the present Association and preceding Associations. On this work I put in all of June and July and by that I mean not only days, but Saturday [fol. 1191] urday afternoons, Sundays and practically all evenings. Since then I have put in perhaps one or two week ends and several evenings. I worked with Mr. Gordon. I have heard Mr. Gordon's testimony in this case and am familiar with the exhibits which have been introduced here. I agree with the testimony of Mr. Gordon. I have checked with him all the tables, charts and lists which up to this time have been introduced in evidence and verified the correctness thereof. I was employed in the office of the Maple Flooring Manufacturers Association last summer and there acquired a certain familiarity with reports and data which were available in the office of the Association.

"Q. Now, Mr. Keehn, what further study did you and Mr. Gordon make of the relationship of the price of The Product, so-called, being the three grades of maple flooring selected, and the prices of other commodities?

A. We made a comparison, going on from where Mr. Gordon's testimony ended, of the prices of The Product with prices of competing wood floorings and the costs of raw material, and the other manufacturing and marketing costs.

We also made a study of the operation of the law of supply and demand, were it permitted to operate in a free and unobstructed manner, and studied the movements of supply and demand, the price and the production of The Product of the Maple Flooring Manufacturers Association to determine whether or not the prices of "the product" had been permitted to operate in a free and unobstructed manner, as compared with the conditions of supply and demand of The Product.

Q. Now, will you take up the first of those subjects, namely, the comparison of the prices of The Product of the Association, and [fol. 1192] compare it with the prices of competing wood floorings? Before you do that, let me ask you what you mean when referring in your testimony and in the charts and tables to the "Association?"

A. I mean the Association that exists today and those previous Associations which bore the name "Maple Flooring Manufacturers Association."

Q. You have attempted to make no distinction in your data?

A. No.

Q. All right. Will you proceed with the study?

A. The prices of The Product have been compared with the prices of oak flooring, Arkansas Soft Pine Flooring, Southern Yellow Pine Flooring and Douglas Fir Flooring.

For our information as to what wood floorings were competing, we secured advice from the office of the Association, and also from the field representative or inspector of the Association, Mr. Robertson.

We made comparisons for the period 1918 to 1923. There were not sufficient data earlier so comparisons could be made previous to the years mentioned.

Of the floorings which were competing and whose prices we studied, Oak and The Product are hardwoods; Arkansas soft pine, southern yellow pine and Douglas fir are soft woods.

It might be expected that movements of the prices of The Product, therefore, would be more nearly identical with the prices of oak flooring than with the prices of the three soft wood floorings studied.

We prepared indices of the prices of the four competing wood floorings, which we studied. For our quotations of the prices of [fol. 1193] these other four floorings we took those quotations found in the trade publication called Lumber. This publication is recognized as a reliable trade paper in the lumber industry. It is used, furthermore, as a source of lumber prices by the United States Department of Commerce for its publication "Survey of Current Business."

The quotations were taken from the issue of the last week of each month to represent the prices in that month. Our purpose in taking the quotations from this week was that they would represent the prices realized or bid and asked in the third week of the month, or approximately the middle. Where the quotations were not available

in the issue of the last week of the month we took quotations from the issue previous, and where absent in both we took them from the issue subsequent. The index of—

Mr. Thompson: May I ask just one question?

A. Yes.

Q. Do you know where Lumber obtains the prices which are used in the publications?

A. Yes. It obtains the prices of the southern yellow pine flooring, I believe from the Southern Pine,—reports of members of the Southern Pine Association. At least they are the prices F. O. B. mills, and they are the average of actual prices realized by mills in Alexandria, Louisiana, Hattiesburg, Mississippi, Kansas City, Missouri, and Birmingham, Alabama.

The Arkansas soft pine prices are an index prepared by the publication itself, and are secured from reports, I believe, of producers of Arkansas soft pine. The oak flooring prices in the early [fol. 1194] part of the years are for the Cincinnati market. I am not certain as to where those prices came from. But since then, since May, 1922 the prices are those realized by members of the Oak Flooring Manufacturers Association; and the Douglas Fir flooring prices are those quoted F. O. B. mills in the Seattle market. I am not certain as to where "Lumber" secures them.

To go on with the composition of the indices, The Product is composed, as previously explained, of the prices of clear, number one and factory 13/16th by 2¼ grades weighted 50 percent. clear, 35 percent. No. 1, and 15 percent factory. The prices are F. O. B. mills.

The oak flooring index is the arithmetic average of the prices of clear plain white and red, selected plain white and red, and number one common 13/16ths by 2¼ inch face grades.

The prices are in the Cincinnati market, March, 1919, to December, 1920. They are F. O. B. mills Cincinnati basis after April, 1920.

The Arkansas soft pine flooring index is the arithmetic average of the prices of edge grain B. and better and flat grain B. and better, 1 by 4 flooring. They are F. O. B. mills also.

Q. What?

A. Those prices are F. O. B. mills also.

The southern yellow pine flooring index is the arithmetic average of the prices of edge grain B. and better, flat grain B. and better and flat grain No. 1 common, 1 by 4 flooring. The prices are F. O. B. mills, Alexandria, Louisiana, March, 1919 to March, 1921. The [fol. 1195] index is the average F. O. B. mills price of Alexandria, Louisiana, Hattiesburg, Mississippi, Kansas City, Missouri, and Birmingham, Alabama, July, 1920 through May, 1923.

Of course, in some cases the prices were not available in all of those four cities, and when that was the case the average of the prices in those cities, which were available, was taken.

The Arkansas soft pine index is included after November, 1922 in this case. The Arkansas soft pine prices are included with the Southern yellow pine prices in the publication "Lumber" after that date.

The Douglas fir flooring index is the arithmetic average of the prices of vertical grain, Nos. 1, 2 and 3 clear and flat grain No. 2 clear

and better, 1 by 4, 10 to 16 ft. They are F. O. B. mills in the Seattle market.

As to the source of the prices of the Southern yellow pine flooring, I am not definitely certain but their source could be verified or found out by investigation of the trade paper Lumber.

Q. Now, those various grades that you have selected are nearly comparable to the grades selected for The Product as possible to find in market quotations?

A. In selecting the grades, the prices of which were averaged to make our indices, we secured information from the Association office as to which would be representative grades of those competing with the grades of the maple flooring in the index of The Product of the Association.

The selection of grades was also presented to the field representative [fol. 1196] of the Association, Mr. Robertson, for verification as to adequacy.

Q. And what was his report?

A. He concurred with the selection of the grades used in the composition of the indices.

Q. As being representative and competing?

A. As being representative and competing. Now, I have plotted—

Mr. Johnston: Just before you get to that, Mr. Keehn.

Q. In preparing these indices, were they prepared in the same manner as all the other indices?

A. Yes.

Q. As testified to by Mr. Gordon here?

A. Yes.

Q. And in the same method as followed by the Department of Labor, and other Governmental Departments in their statistics?

A. I am not certain which method you refer to.

Q. Well, I mean the preparation of price indices. Mr. Gordon testified that some of the Governmental Departments used the same methods in preparing their price indices or indices of other data?

A. I do not believe they are, no. Up to the present time I have only described them in actual prices, on a dollar basis.

Q. Oh, yes. You have not gotten to the comparison of percentages.

A. No. In making these comparisons we prepared two charts. On the first chart—

Q. By the "first chart" you mean this chart which I show you, do you (showing a chart to the witness)?

A. Yes.

[fol. 1197] Mr. Johnston: I will ask to have this chart marked Defendants' Grant Keehn's exhibit No. 17.

(Said document, so marked as Defendants' Grant Keehn's exhibit 17, is attached and returned herewith.)

A. On this chart the averages of the various grades that I explained previously, still in the dollar form were plotted. The purpose of plotting them in this form was to justify the continuation or the lack of continuation of two of the series.

In the oak flooring index the quotations were in the Cincinnati market from March, 1919, through December, 1920, and F. O. B. mills Cincinnati basis from May, 1920 to May, 1923. It can be seen on the chart, as both series are plotted over a certain portion, namely the last part of 1920, that this change in the location of the market is not an important factor, and that the curves for the prices in both of these markets, during the period in which they overlap, are on practically the same level and have the same fluctuations.

This same thing is true for the index of Southern yellow pine flooring. During 1919 and the early part of 1920 the quotations are F. O. B. mills in the Alexandria, Louisiana, market alone; and in the last part of 1920, throughout the remainder of the period under consideration, they are the average F. O. B. mills prices in four different markets.

Again it can be apparently seen that the two curves, during the overlapping in the Southern yellow pine prices, are on identically the same level, and have identically the same fluctuations. We did this to justify our change in the compositions of the series.

[fol. 1198] Q. So that in your opinion the difference would be negligible?

A. Yes, sir. It can be seen on this chart that the five curves are on various levels, due entirely to the difference in the value of the grades used in the composition of the indices, and due to the difference in the inherent values of the different woods.

We were not interested in the difference in the values of the particular woods. We were interested, rather, in the fluctuations of the prices—the relative fluctuations of the prices. We, therefore, believed it desirable to place the various indices prepared on a percentage basis merely to facilitate comparison. That is, we wanted to place the curves in just a position on the chart. This was done. We took as a base, equalling 100 per cent., the average monthly figure of each index to equal 100 per cent. For each series the average was made of the same and an equal number of months. The figures for each series which were taken, the average of which would equal 100 per cent., were for the period of March, 1919, through May, 1923, for this was the period during which quotations were available for all. In some few months in some of the series data were lacking. When this occurred we took as the figures for the month or months in which data were lacking, those which would be represented by points appearing on a straight line connecting the segments of the curve during which data were available.

Q. In other words, you have connected the point from which data was available with the succeeding point where data was available?

[fol. 1199] A. Yes.

Q. By a dotted line?

A. Yes. And in making up our average, which would equal 100 per cent., we took the point on that straight line where that straight line crossed the vertical line representing the month, the particular month.

Our reason for using an average of the entire series to equal 100 per cent., was that we believed no year subsequent to the war to be

normal. An average of the entire period would be a better base for that reason, and because our purpose was not to compare relative levels so much as to compare fluctuations.

In preparing the indices on a percentage basis where the curve, namely, in oak flooring and yellow pine flooring, was composed of two overlapping lines, we averaged the quotations of the two lines into one. The cause or reason for this was that we did not wish to have more lines than necessary on the chart because the greater the number of lines the more confusing it would be. Furthermore, as was apparent on exhibit 17 I believe the number is——

Mr. Johnston: Yes.

A. (Continuing:) —the overlapping of the lines showed the quotations in the two markets to be practically identical.

This chart on which the indices were plotted on a percentage basis is drawn on identically the same scale but in larger proportions. This also was to facilitate comparison. The shape of the curves has in no way been changed from the shape of those curves which appeared in exhibit 17.

Q. Now, this second chart which you are discussing is the one [fol. 1200] which I now show you, is it not (handing a chart to the witness)?

A. Yes, sir.

Mr. Johnston: I will ask to have this marked Defendants' Grant Keehn's exhibit 18, for identification.

(The document indicated was thereupon marked as Defendants' Grant Keehn's exhibit 18, for identification, and was handed to the witness.)

Q. All right, go ahead, Mr. Keehn?

A. This chart, exhibit 18, indicates that the prices of all five floorings started to rise sharply at about the same time, in March and April of 1919. The rise of the prices of The Product, however, was not as accelerated as that of the prices of the other four wood floorings. The last half of 1919 saw a reaction in the advance of the prices of the other floorings, whereas the price of The Product, which as can be seen, was still upon a relatively lower level, continued to advance.

In November and December of 1919 the upward movement was recommended in all series, with The Product still upon a lower level. This rise was continued by all five wood floorings until early 1920. The soft woods, Arkansas soft pine, Southern yellow pine and Douglas fir reached their peaks coincidently in February of 1920.

The hard woods, oak and The Product, continued to advance and did not reach their peaks until April of 1920. The decline which has set in after the peak prices in all of the five series was broken in all by a slight reaction in the third quarter of 1920, but the precipitous downward movement was again resumed.

[fol. 1201] The downward movement of all indices was broken only in February, 1921, save for Southern yellow pine, and cul-

minated in the low points in 1921. Douglas fir was the first to reach its low point in April 1920. The next two months saw a slight reaction in all prices, and, with the exception of Douglas fir, July again brought a decline.

This marked the low point for the other two soft wood floorings, Arkansas soft pine flooring and Southern yellow pine flooring.

The next month saw a sharp rise in the indices of the soft wood flooring prices. The two hard wood floorings, however, continued to decline in price. Oak flooring reached its low point two months later, in September.

Mr. Newman:

Q. What year?

A. September, 1921.

Mr. Johnston:

Q. Yes?

A. And The Product continued to decline until October, when the bottom was reached. Thus the price of The Product was the last one to advance, having continued its downward movement in the face of the sharp advance in other flooring prices.

A reaction from the upward trend was felt by all of the flooring prices in the early months of 1922; but the upward movement was again resumed in the second quarter of that year, and continued with but few interruptions to May of 1923.

The Product price index has risen since its low point in 1921 at a slower rate than all other flooring indices except for that of Douglas fir flooring, from their respective low points.

[fol. 1202] This comparison indicates the price movements and fluctuations of these competing floorings to have been practically identical with those of the prices of The Product. All have moved together with soft wood floorings and coincidentally reached their peaks and troughs earlier than did the prices of the hard wood floorings.

The Product is shown to have advanced less sharply on the up-swings, both in 1919 and again in 1921. It would appear that the existence of the Maple Flooring Manufacturers Association has not tended to accelerate the upward movement of the price of its product.

It would appear further that the Maple Flooring Manufacturers Association could not have had control of the prices of its product when the price of its product did not advance in the face of sharp advances of other flooring.

Q. Is that all upon that, Mr. Keehn?

A. Yes, sir.

Q. Now, as I understand you, the comparisons on chart 17 and chart 18 will show that there were substantially the same movements in the prices of these various commodities?

A. Yes, sir.

Q. And so far as those two charts are concerned the curves or the lines are identically the same, or almost the same?

A. They are identically the same, with the exception that in exhibit number 18 they are placed in juxtaposition.

Q. Yes.

A. Because of the use of the logarithmic paper, the placing them [fol. 1203] upon an index basis does not alter the shape of the curve.

Q. Therefore, exhibit 18 accords just as fair and accurate a comparison of the price movements as Defendants' exhibit No. 17?

A. Yes, it permits an even more accurate comparison of the price movements.

Q. The methods you have described of arriving at the index is one which in your opinion is fully justified by accounting methods and by statistical methods?

A. By statistical methods, not accounting.

Q. I mean by statistical methods. Accounting has not anything to do with it.

A. No.

(Defendants' Grant Keehn Exhibit 17 for identification admitted in evidence as Defendants' Grant Keehn Exhibit 17.)

(Defendants' Grant Keehn Exhibit 18 for identification was admitted in evidence as Defendants' Grant Keehn Exhibit 18.)

Q. What is the next subject, Mr. Keehn, that you and Mr. Gordon investigated in connection with this matter?

A. We investigated the prices of The Product, or the prices realized by the members of the Association, with their cost of production, and in comparing the prices with the costs we made a division of the costs into the costs of the raw material and the other manufacturing and marketing cost.

Q. Now, in all these comparisons you used the same indices for the price of the product that were used by Mr. Gordon?

A. Yes, sir.

— In the tables and charts that were introduced?

[fol. 1204] A. Yes, we have used the same index throughout.

Q. Well, will you proceed with your consideration of the prices of The Product with the price of lumber?

A. The cost of the raw material in the production of maple flooring is approximately three quarters of the total cost of the finished maple flooring. We secured that information from the office of the Maple Flooring Manufacturers Association. Raw material for the manufacture of maple flooring is rough maple lumber. In making the comparison of the costs of the raw material and price realized it was not our purpose to show the relative amount of profit secured at one time as compared to another, but merely to indicate changes in cost of the raw material and the finished product, and to compare the fluctuations in their price.

We prepared an index of hard maple lumber prices which would be the costs of the raw material, of maple flooring. The index that we used is, throughout the entire period, the arithmetic average of the three grades of hard maple lumber, first and second, No. 1 and No. 3 common, 4/4.

The prices used are F. O. B. mills in the Michigan market, with

the exception of January, February, March and April, 1920, which are F. O. B. mills in the Wisconsin market. The index is on a quarter yearly basis, 1913 through 1918, and monthly thereafter, with the exception of December, 1919, and May and September, 1920, for which months data are lacking.

As in the other series which we have used, 1913 is taken as a base, but in this case the average of the last three-quarters of 1913 only equal 100 per cent, as data for the first quarter are not available.

[fol. 1205] Mr. Thompson:

Q. Does the source of this price data appear?

A. Yes, sir. I am coming to that.

Mr. Johnston: He was just going to get to that, Mr. Thompson.

Mr. Thompson: Yes.

Mr. Johnston: It appears on the chart.

Mr. Thompson: Yes, I see.

Mr. Johnston:

Q. Proceed, Mr. Keehn.

A. The quarterly data for the years 1913 through 1918 are taken from Price Bulletin No. 43 of the United States War Industries Board. This Bulletin is entitled, I believe, Prices of Lumber.

Monthly figures for the years 1919 to 1923 are taken from the trade papers "Lumber" and "The American Lumberman."

"Lumber" is used in most cases. June, July and October, 1920; January and February, 1921 and July, 1922 being the exceptions, from The American Lumberman.

Q. You mean taken from the American Lumberman?

A. Yes, sir.

Mr. Johnston: All right.

A. As in the case of the quotations for competing wood floorings, the quotations in the last week in the month were taken to represent the month, and where absent in that issue, from the issue of the previous week; and where absent in both, from the issue of the subsequent week.

In compiling this index there were two other sources of information which we might have used. There were the raw material costs, [fol. 1206] which are included in the tables of test runs made by the Maple Flooring Manufacturers Association. These figures would have been ideal in some respects, but they were so infrequent and at such irregular intervals that the fluctuations would have either been not apparent or disguised.

The other possible source was the Wholesale Price Bulletin of the U. S. Bureau of Department of Labor Statistics. The prices of hard maple lumber quoted in those bulletins, however, are in the New York market and are wholesale prices. They would include, therefore, freight charges from the place of manufacture to New York City, and would include the wholesaler's profit.

The fluctuations in this series, therefore, could be expected to be

somewhat different from the fluctuations in the costs of the raw material used by the members of the Maple Flooring Manufacturers Association, who purchased the hard maple lumber in most cases in the Michigan and Wisconsin markets.

Q. Therefore, you considered the prices which you did take from the "Lumber" and The American Lumberman as being more clearly representative?

A. Yes; at the same time considering those prices in the price Bulletin 43 of the War Industries Board.

Q. Well, that was on a quarterly basis?

A. Yes, sir.

Q. That is the reason why figures were taken on a quarterly basis?

A. Up to 1919.

Q. Up to 1919?

A. Yes. The reason that an arithmetic average was made of the prices of these three grades was that all of these grades, and others, namely, No. 2 and No. 3 common A, are used by the Association—by [fol. 1207] the members of the Association. The quotations on these other two grades were not available in the United States War Industries Board Bulletin #43. The prices of only the three grades used, namely, first and seconds, No. 1 and No. 3 common, were quoted in this bulletin.

We could not weigh the prices of these three grades in proportion to their use because we did not have figures on the relative consumption of these three grades by the members of the Association. It was necessary, therefore, to combine them on some arbitrary basis, and the arithmetic average seemed the reasonable method of combining them.

As I stated, the prices, with the exception of a few months, are F. O. B. mills in the Michigan market. The reason for this is that prices are quoted only in the Michigan market in the bulletin previously mentioned, of the United States War Industries Board. The substitution of the Wisconsin prices in the four months in early 1920 was necessitated by the absence of data for prices in the Michigan market in these four months.

In order to justify the substitution of Wisconsin for Michigan prices we made a comparison, over a period of months, of Michigan with Wisconsin prices. That comparison is made on this chart.

(Said chart marked Defendants' Grant Keehn Exhibit 20 for identification.)

A. These indices of Michigan and Wisconsin hard maple lumber prices are where possible the arithmetic average of the prices, first and seconds, No. 1, Nos. 2 and No. 3 common, 4/4, hard maple lumber, and are the average of the quotations for these four grades in the last week of the month of the issues of both of the trade papers [fol. 1208] previously mentioned, "Lumber" and The American Lumberman.

I believe I did not mention any justification for the use of the American Lumberman, as a source of data.

Q. What about that?

A. It is a trade paper which is considered as reliable in the trade; and quotations in the preparation of a bulletin by the United States Federal Trade Commission of lumber prices were taken from it. The title of it is "Report of the Federal Trade Commission on War Time Costs and Profits of Southern Pine Lumber Companies."

To get back to the chart comparing the prices of rough maple lumber in the Michigan and Wisconsin markets, it is apparent that the fluctuations of the two series are practically similar. The difference, if any, in the two curves is in the higher level of the Michigan prices than of the Wisconsin prices.

The substitution of Wisconsin for Michigan prices in the first four months of 1920 is justifiable, first, because the shape of the curve would not be altered by the substitution; and secondly, because the substitution would, if anything, act to the disadvantage of the Association.

The reason for this latter statement is that the base, 1913, is made up of prices in the Michigan market, which we can assume from a study of exhibit No. 20 were higher than the prices which would have existed for Wisconsin rough maple lumber in 1913.

This would make the indices for the four months in early 1920 appear lower since they are Wisconsin prices. Early 1920 was the period of high prices in both the finished product, finished flooring, [fol. 1209] and in the rough lumber. The substitution would make raw material costs of the members of the Association appear lower during this period of substitution of Wisconsin for Michigan prices.

To return now to the chart, on which the prices of rough maple lumber and the price of The Product of the members of the Association are compared, for the years 1913 to 1923:—

Q. That is this chart which you now produce?

A. Yes?

Mr. Johnston: And which I will ask to have marked Defendants' Grant Keehn's exhibit 19 for identification.

(The document indicated was thereupon marked as Defendants' Grant Keehn's exhibit No. 19 for identification, and was handed to the witness.)

Q. Will you proceed with the exposition of the chart, Mr. Keehn?

A. A study of this chart, Exhibit 19, shows that the prices of the finished goods have fluctuated practically identically with the prices of the raw material. In the years 1913 through 1915 the downward trend in the prices of the rough maple lumber were exactly reflected in the price of The Product.

Early in 1916 the two lines started to diverge, and the price of the raw material attained a higher relative level during the middle of the year than did The Product.

In the years 1917 and 1918 the spread was even greater, with the rough maple lumber upon a distinctly higher level. It was during these years that the demand for the product was low on account of the small volume of new building.

[fol. 1210] Here again the less specialized product, namely, the rough maple lumber, for which there was demand other than for building construction purposes alone, maintained a higher level, similar to the all commodity price index and the indices the prices of all building materials, and lumber, which was brought out in the testimony of Mr. Gordon. The more specialized product, the flooring, on the other hand, could not be diverted to fill the demand for uses other than building construction, and consequently could not and did not attain as high a price as did other commodities, and its raw material,—rough maple lumber.

The data for these years, on this chart, exhibit 19, are another indication that the Maple Flooring Manufacturers Association did not have control of the price of its product, for it would not have allowed the price of its product to advance practically not at all, while at the same time the price of the raw material had advanced materially.

In March, 1919, when the demand for building was allowed expression, the prices of both the raw material, rough maple lumber, and the finished product, the flooring began a sharp advance. In this advance the price of The Product temporarily out-stripped the price of the rough maple lumber. This condition again was caused by the difference in the degree of specialization of the two products. The manufacturers of maple flooring were less prepared to meet the demand for their product because of their relatively low activity in the previous years, 1916, 1917 and 1918. The price of The Product reached its peak in April of 1920, whereas the price of the [fol. 1211] raw material continued to advance and did not reach its peak until two months later, in July. At this time it again reached a higher level than the price of the finished product.

It should be noted that the price of The Product was actually going down, while the raw material cost was going up.

From the peak, in early 1920, the prices of The Product declined slightly, had a short reaction, and then plunged into a precipitous decline, unbroken except in February and June of 1921, until the very low point was reached in October, 1921.

The price of the rough maple lumber during this period had continued its advance until June and July of 1920, and then had a decline, similar to though not as sharp as that of the price of The Product.

The rough maple lumber price advanced from its low point, while the price of The Product continued to decline for one month.

Q. That is 1921, Mr. Keehn?

A. Yes, sir. From the end of 1921 to the last quarter of 1922 both indices had about the same upward trend. In the last quarter of 1922, however, the rough maple lumber advanced sharply, more gradually in the first quarter of 1923, and again sharply in the second quarter.

The price of The Product, on the other hand, has not had as upward a trend as the raw material prices from the third quarter of 1922. The last quarter of 1922 saw practically no advance in the

price of The Product; and the first quarter of 1923 a sharp advance, which eased off in the second quarter.

From this comparison it is evident that the prices of The Product, [fol. 1212] of the Maple Flooring Manufacturers Association, were not unreasonable from the point of view of the cost of raw material. Moreover, from this single point of view it appears clearly that the members of the Association would have been justified in securing a higher price in the years 1917 and 1918 and the first part of 1919, and the last half of 1920, and the first one-half of 1921, and the first part of 1923. The prices of The Product were on a relatively higher level than the price of its raw material for only about one year in the 11 under consideration.

That completes my explanation of the comparison of the prices of The Product with the raw material costs.

(Defendants' Grant Keehn Exhibit 19 for identification was received in evidence as Defendants' Grant Keehn Exhibit 19.)

(Defendants' Grant Keehn Exhibit 20 for identification was received in evidence as Defendants' Grant Keehn Exhibit 20.)

Q. Now, you said that in addition to comparing the prices of The Product, prices realized for the Product with the prices for the raw material, rough maple lumber, you have made a further comparison of the price of The Product with the price of the cost, other than raw material, of producing the finished product, maple flooring?

A. Yes. We made a comparison of the price of The Product with an index of the average manufacturing and marketing cost of the members of the Maple Flooring Manufacturers Association.

This index includes costs other than the raw material. These average costs were made recently quarterly by the Association. The information of the average costs was secured from the office of the [fol. 1213] Association. The comparison has been made from 1916 to 1923. The only other year in which a survey was made was in 1913, which year we have used as a base.

We did not believe it necessary to chart previous to 1916 because it would merely be a straight dotted line from 1913 to 1916. These two indices were plotted on this chart (indicating).

Q. Have you prepared a table showing these indices, and the figures representing same?

A. Yes, the table is appended to the chart.

Q. And this is the chart which expresses those tables (handing a document to the witness)?

A. Yes.

Q. Or the figures shown thereon?

A. Yes.

Mr. Johnston: I now ask that these be marked for identification Defendants' Grant Keehn's exhibit 21, together with the table appended there to the chart.

(The document indicated was thereupon marked as Defendants' Grant Keehn's exhibit 21, for identification, and was handed to the witness.)

Q. Will you now explain further what this chart and the table shows?

A. Yes. In 1916 and early 1917, the average manufacturing and marketing cost index, and the index of the prices of The Product, were upon the same approximate relative level, both advancing slightly.

From the middle of 1917 to the second quarter of 1918 the average manufacturing and marketing cost index advanced sharply; whereas [fol. 1214] the price of The Product declined steadily. In the second quarter of 1918 the price of The Product advanced sharply to a new high level, which, however, was still considerably below the relative level already reached by the average manufacturing and marketing costs.

From the second quarter of 1918 to the second quarter of 1919 the index of average manufacturing and marketing costs advanced, while the index of the prices of The Product remained at about the same level. The price index of The Product advanced sharply from the second quarter of 1919 to the peak of early 1920; while the index of average manufacturing and marketing costs declined throughout the third and fourth quarter of 1919, and advanced sharply throughout the second quarter of 1920. From its peak in the second quarter of 1920 the price of The Product declined precipitiously throughout the remainder of the year.

During this time the average manufacturing and marketing costs had continued to advance. Through practically the whole of 1921 the two indices were upon approximately the same level, and both declined at the same rate.

Throughout the year 1922 the index of average manufacturing and marketing costs maintained, with the exception of the second quarter, approximately the same level reached in the last quarter of 1921.

The index of The Product, on the other hand, advanced steadily from its low point at the end of 1921.

The first quarter of 1923 saw a further increase in the level of the Product price index and a slight decline in the index of average [fol. 1215] manufacturing and marketing cost.

It is apparent from this comparison that there is little similarity, except in general direction, in the movements of these two indices. For approximately half of the period the average manufacturing and marketing costs were upon a higher relative level than the prices of The Product, and during approximately one half of the period this relationship was reversed.

A study of the items which make up the average manufacturing and marketing costs, and the conditions and forces which affect them, will provide an explanation of the divergence and dissimilarity in the movements of these two indices.

Of the items which go into Average Manufacturing and Marketing Costs, other than raw materials not here included, labor cost is dominant. Because of agreements with labor and the lack of an immediate necessity to raise wage rates, wages practically always lag after prices of products upon which this labor is expended. So great is the lag that the payments made to labor increase even after the

peak in prices has been reached and continues to decline even after the prices have reached their low points and have again started upon the upswing.

Delay is also caused in the action of labor costs by the increased per unit expenditure after the peak has been reached and the rate of production decreases; and conversely, after the rate of activity has increased the per unit expenditure for overhead and labor decreases. The other manufacturing and marketing costs, which are the overhead expenses, fluctuate in a similar manner, and are less flexible in their fluctuations.

[fol. 1216] This comparison indicates the fact that the prices of The Product during the last half of 1917, 1918, and the first half of 1919 were upon a much lower relative level than the average manufacturing and marketing costs.

As was stated when a comparison was made of the prices realized to the costs of the raw material, the Association would have been justified had it secured higher prices during this period. And it was pointed out that the cause of the low relative price level of The Product at this period was due to low volume of building construction and the consequent lack of demand for The Product."

(The chart which was explained by the witness, together with the table showing the indices of the average manufacturing and marketing costs, was marked Defendants' Grant Keehn Exhibit 21, and was received in evidence.)

"Q. Now, Mr. Keehn, you indicated that you and Mr. Gordon made a further comparison or investigation to show how the prices of The Product have re-acted to the forces of supply and demand?

A. Yes. We went into that subject very thoroughly.

Q. Will you tell us what you did in that investigation, and what questions were considered and are necessary to consider in making that comparison?

A. Well, before we investigated the relation of the price of The Product to the conditions of supply and demand for it, we believed that it would be desirable to study how the law of supply and demand could be expected to operate were it allowed to operate in a free and unobstructed manner.

[fol. 1217] The simplest statement of the fundamental principle of the law of supply and demand as affecting price would be that if the demand for a commodity increases, and the supply of it remains the same, the price will go up, or if the supply is increased, and the demand remains the same, the price will go down.

There are numerous corollaries to the law to take care of the various and simultaneous changes in amount of the two forces. They may all be summed up, however, in the statement that as the excess of demand over supply increases or decreases, the price will increase or decrease; and as the excess of supply over demand increases or decreases, the price will decrease or increase.

The consequent re-action upon the amounts of supply and demand of such changes in price must be considered. When the price increases as a result of an increase in the excess of demand over supply

for example the greater profit which it allows should stimulate the offering of supply upon the market to the point where the increase in the excess of demand over supply will be eradicated and the price will come down to the original level; or, if the price has decreased, the amount of supply offered will be decreased because of the smaller profit allowed so that the excess of supply over demand will be wiped out and the price will come back to normal. On the other hand, the increase or decrease in price will discourage or stimulate the demand to the extent that the increase in the excess or shortage of demand over supply will be removed and the price will become re-adjusted at the normal level.

[fol. 1218] These are the two forces, then,—supply and demand—a change in either of which will re-act upon price, which in turn will cause a change in one or both of the two forces so that the normal relationship between them will be re-secured and the normal level for the price will be resumed.

The statements of the law of supply and demand, both as regards their effect upon price and the effect of price upon them, must be qualified. Certain conditions must be assumed in order to make these statements valid. First, a complete and accurate knowledge of market conditions must be had, at the moment these conditions exist, by both buyers and sellers; for if the buyers and sellers do not have complete and accurate knowledge of the conditions of supply and demand they cannot know the actual worth of the commodity and they cannot adjust the prices at the worth of the commodity, since their knowledge of its worth is inadequate.

Secondly, the judgment of the buyers and sellers in their interpretation of this knowledge must be infallible; for if their judgments were fallible the prices which are secured will vary from the actual worth of the commodity by the amount of their error in appraising the worth, in the light of their knowledge.

Thirdly, there must be perfect flexibility of supply to demand, so that the adjustments will be instantaneous. The perfect flexibility of supply that I just mentioned as necessary to the validity of the fundamental principles of the law of supply and demand means that the production rate can be increased or decreased with the same readiness [fol. 1219] as conditions in the demand, so that stocks and demand are never accumulated above or below what is normal or necessary.

Under ideal conditions there would be a normal supply of stocks on hand and a normal supply of accumulated orders, and the production rate would be just equally the demand rate, and as the demand rate increased or decreased the production rate could be increased or decreased to equal the change in the demand.

Fourthly, the law of supply and demand must be equalified to the extent that a condition, what is termed a "static" market, exists. "Static market" is used to mean one in which the nature of the demand, and of the supply, does not change. A change in the nature of the demand would be, for example, when the price is increased, but the same quantity or more will be taken from the market. The rise in price has not discouraged demand. There has been a change in

the intensity of the demand. In the same way a decrease in price will not stimulate the purchase of a greater quantity of the product if the demand has become less intense.

A change in the nature of the supply would mean in this case a change in the costs of production. If the costs have increased, the increase in price will not necessarily stimulate greater production; or the opposite, if costs of production have gone down, a decrease in price will not necessarily cause smaller production. For the fundamental unqualified principle of the law of supply and demand to operate, therefore, neither the intensity of the demand nor the costs of supply may change; that is, we must have a static market.

[fol. 1220] It is apparent, therefore, that the economic law of supply and demand, as I stated originally, must be modified to meet conditions as they actually exist.

Market information is not complete, is not always accurate, and is not always instantaneously available. Variations occur in human judgment, so the interpretation of the market information, even were this information perfect, would differ materially.

Furthermore, in this regard, not only must present conditions of supply and demand be judged by the producers, but also the future conditions must be predicted to determine purchases and production.

The adjustment of supply and demand cannot be perfect, for production, of necessity, is less flexible than demand. Production is bound by physical limitations, whereas demand can spring into existence by the mere placing of an order; and, finally, business is never continuously in a static condition—but rather in a dynamic condition wherein demand fluctuates in intensity and the costs of production change.

The conditions that make necessary the qualification of the fundamental laws of supply and demand are elements in what are known as business cycles, or fluctuations in the activity and prosperity of business; so that the existence of business cycles will be apparent and more completely understood I would like to read a short portion from the report of the President's Conference on Business Cycles and Unemployment. This Committee was composed of several persons of some reputation. I might give a list of the members of this Committee.

[fol. 1221] Mr. Johnston: Yes, I think you better.

A. Owen D. Young, Chairman of the Board, General Electric Company, Chairman; Joseph H. De Frees, former president United States Chamber of Commerce; Mary Van Kleeck, Russel Sage Foundation; Mathew Woll, vice president, American Federation of Labor; Clarence M. Woolley, president American Radiator Company, and Edward R. Hunt, Secretary of the President's Conference on Unemployment, Secretary.

Q. Did that Committee also have the assistance of some economists and statisticians?

A. Yes. It has a Foreword by Mr. Hoover. It has Articles by Wesley C. Mitchell, National Bureau of Economic Research, Frederick R. Macaulay, National Bureau of Economic Research, Willford I. King, of the same Bureau, William A. Berridge, of

Brown University, and Paul F. Brissenden, of Columbia University; well, there are numerous others whose work is included in it.

The particular part that I wish to bring out is in Chapter I, called "Business Cycles, by Wesley C. Mitchell, who is one of the leading statisticians of the country, particularly in the phase of the subject of Business Cycles. (Reading:)

"The Nature of Business Cycles"

"Fifteen times within the past one hundred and ten years, American business has passed through a 'crisis.' The list of crisis years (1812, 1818, 1825, 1837, 1847, 1857, 1873, 1884, 1890, 1893, 1903, 1907, 1910, 1913, 1920) shows that the periods between successive crises have varied considerably in length. Further, no two crises [fol. 1222] have been precisely alike and *and* the difference between some crises have been more conspicuous than the similarities. It is not surprising, therefore, that business men long thought of crises as 'abnormal' events brought on by some foolish blunder made by the public or the government. On this view each crisis has a special cause which is often summed up by the newspapers in a picturesque phrase 'the Jay Cooke panic' of 1873, 'the railroad panic' of 1884, 'the Cleveland panic' of 1893, 'the rich man's panic' of 1903, 'the Roosevelt panic' of 1907.

"Longer experience, wider knowledge of business in other countries, and better statistical data have gradually discredited the view that crises are 'abnormal' events, each due to a special cause. In stead of a 'normal' state of business interrupted by occasional crises, men look for a continually changing state of business—continually changing in a fairly regular way. A crisis is expected to be followed by a depression, the depression by a revival, the revival by prosperity, and prosperity by a new crisis. Cycles of this sort can be traced for at least one century in America, perhaps for two centuries in the Netherlands, England, and France, and for shorter periods in Austria, Germany, Italy, Spain, and the Scandinavian countries. Within a generation of two similar cycles have begun to run their [fol. 1223] courses in Canada and Australia, South America, Russia, British India, and Japan.'

I read that merely to explain something of the nature of business cycles, and also to establish their existence.

Now, if an outline were made of what might be expected to happen were the law of supply and demand to operate in a free and unobstructed manner throughout a complete business cycle, all of the conditions which make necessary its qualifications would be considered in all of their aspects. An outline of this sort, furthermore, if dealt with in the abstract rather than with reference to any one particular industry, would serve as a standard by which to judge whether or not in a particular industry the law of supply and demand had operated in a free and unobstructed manner; and to form such an outline I will apply the law of supply and demand to the full course of a business cycle.

Since business cycles are continuous, each one growing out of its predecessor, and merging into its successor, it does not matter with which phase of the cycle I start; but as it is necessary to have some starting point, the point at which the demand begins to revive after a period of inactive business will be taken. The circumstances existing in industry will be traced throughout the business cycle—revival, prosperity, crisis, and depression.

In discussing the operation of the law of supply and demand throughout the business cycle recognition must be made of two types or two divisions of demand, and two types or two divisions of supply. There is, first the rate of new demand, or amount of demand [fol. 1224] that is arising to be filled, and secondly, there is the demand which has accumulated and which has not yet been filled. The analogous parts of supply are the rate of production, or the amount that is being produced to be sold, and, secondly, the stocks of the supply which have been produced, which have not as yet been shipped or sold; while the new demand rate is the genesis of accumulated demand and is the important and effective factor in determining the activity of the industry over the course of time, and while it is the price at which new demand is accepted that is the market price, it is the condition of stocks and of accumulated demand,—costs remaining the same, that determines the necessity or desirability of accepting new orders, and at what price to accept them. Furthermore, it is the conditions of stocks and accumulated demand that determine the rate at which new supply will be produced.

Now, to get back to the outline of what might be expected were the law of supply and demand allowed to operate in a free and unobstructed manner throughout the course of a business cycle, and taking the point at which demand revives after a period of inactive business. Certain conditions could be expected to exist at this point. New demand would be arising at a very low rate. There would be practically no accumulated demand. There would be large quantities of stocks on hand which had been produced during the preceding periods of crisis and depression at which time the rate of new demand was lower than the rate of production. Because of the large supply and small demand the price would be low—probably considerably below the cost at which a large part of [fol. 1225] the stocks had been produced. The producers would realize that it was impossible to secure prices such as to cover past costs. The rate of production would be low since there would be little reason to continue to pile up stocks. The cost of production by this time would be back at a low level.

The immediate effect of the revival in demand would be either to decrease the stocks on hand or to increase the accumulated demand if this demand could not be filled out of stocks. This decrease in the excess of supply over demand, however, could not be expected to have an immediate reaction upon either production or price. The stock condition would still be considerably over what was desirable for working purposes and the accumulated demand would still be

under normal. The producers would be glad to have their stocks and unfilled orders adjusted to normal by this new demand.

Moreover, they would not be sure that this new demand was the commencement of a permanent and lasting revival or merely a short lived flurry which could be met without an increase in the rate of production above that existing at the time. The prices realized would allow a profit above the low costs and the producers could not be expected to seek higher prices, for these would discourage the growing demands.

As the new demand became greater, the stocks would become less abnormally large and the accumulated demand less abnormally small. The producers, with reasonable security, could anticipate a period of good business. They would be anxious, furthermore, to operate their plants at a greater capacity, provided, only, that costs [fol. 1226] were covered by the prices realized. The natural consequence would be an acceleration in the rate of production.

The rise in prices, however, would lag after the production rate increase by some time. The accumulated demand would continue smaller than the stocks on hand; there would be no physical difficulties in filling the new demand with a reasonable delay for the period of manufacture. The prices, as has been pointed out, would allow a margin of profit at present costs, and there would be a danger of discouraging the new demand, were a higher price asked.

The increase in the new demand rate in a period of revival would be more rapid than the increase in the production rate. It is bound by no physical limitations, and can spring to large size in short time, particularly if the business world is optimistic towards the future. The production rate, even if at a maximum capacity, is far lower in quantity that can be turned out than the quantity of new demand which can arise. In consequence, the excess of supply over accumulated demand would become smaller and smaller. A rise in price would be inevitable even if costs did not increase.

As the production of the finished goods was increased, demand would be created for the materials with which to produce. The natural result would be a rise in the price of these raw materials. This would occur at about the same time as the rise in the price of the finished goods. Other manufacturing costs, overhead and labor, could be expected to be lagging because of wage agreements, and the less flexible nature of overhead expenses. For example, contracts [fol. 1227] for light, heat and power exist, which would have to terminate before higher expenses for light, heat and power would be incurred, and interest rates usually lag after commodity prices throughout the course of the business cycle.

Throughout the period of revival and prosperity, prices could be expected to continue their upward trend, because of the continued increase of the excess of demand over supply. The raw material costs would continue to increase at about an equal rate and other costs would lag slightly. This situation would continue until the new demand began to fall off. It is not necessary to explain why demand falls off; the fact that it does is sufficient to carry out the

outline of the working of the law of supply and demand in the business cycle.

The conditions which would exist immediately before the retardation of new demand would be practically the reverse of those at the inauguration of the revival of demand. New demand would be coming in quantities far in excess of the quantities that could be produced. Accumulated demand would be tremendous and stocks would be seriously depleted. The production rate would be around capacity, hindered by the difficulty of securing raw materials, labor scarcity and inefficiency. The prices would be high and rising. All costs would be high with costs other than raw materials rising more rapidly than previously.

The decrease in new demand would not be noticeable in the quantities of accumulated demand and in stocks until it had dropped below the rate of production. This would occur, however, in a short time. It would not have an immediate effect upon the production [fol. 1228] or the prices. Producers would not be certain that the end of heavy demand had actually been reached.

There would be enough unfilled orders on their books to keep the plant busy for some time without any new demand. Manufacturers would be influenced by the possibility of bringing their stocks on hand back to normal. With costs high, and still rising in most cases, the producers would be disinclined to lower prices in the attempt to secure new orders.

On the downswing of the cycle, in the early part called crisis, the new demand would fall off with extreme abruptness. It would soon have a considerable effect upon the stocks and upon the accumulated demand. As the permanence of this decline became assured and the stocks continued to accumulate and accumulated demand began to sluff off due both to its filling and to cancellation, the production rate would be decreased. It is at this period in the business cycle that the practice of cancellation of orders is very common.

It might be argued that the prices should drop immediately, perhaps before the production rate were decreased, with the purpose of stimulating new demand with lower prices. This, however, could not reasonably be expected. On the crisis period of the cycle, demand becomes inelastic; by "inelastic demand" is meant that it requires a drastic reduction in prices to stimulate a small increase in demand. During the period of prosperity, the costs of production would have been high. The stocks on hand would have been produced at a high cost. Costs at this point, moreover, are very high. Producers would be disinclined to take orders at prices below what [fol. 1229] their goods had cost and below what it would cost to reproduce them. When it becomes impossible for them to secure orders at prices adequate to cover current costs, it is only natural that they should decrease their production rather than to keep on producing goods on which a loss must be taken. And it is only natural that they should endeavor to secure prices which will cover their costs or production, particularly as they must cut deeply to secure even a small demand.

As the demand becomes negligible and the stocks pile up, the impossibility of securing the prices necessary to cover costs would become apparent. Probably a few reductions would have been made without avail. As a result, all regard for cost would be thrown aside, and the price would drop drastically and abruptly in the attempt to move the stock. It would be without use, however, and the stock would continue to pile up. Accumulated demand, furthermore, would have practically disappeared because of the cessation of new demand, and because of cancellation.

The period of the cycle called depression would set in at this point. New demand would continue at a progressively lower level, production would be slowed down, stocks would continue to pile up, and accumulated demand would become practically negligible. The price would fall off gradually.

Raw material costs would have fallen approximately with prices of the finished goods. Other costs would continue high in the early depression, but would begin to fall after a short time.

These conditions would continue until the cycle again reached the point of the inauguration of the revival of demand.

[fol. 1230] In preparing an outline of the operation of the law of supply and demand throughout the business cycle it is desirable that some discussion be given to the manner in which the margin of profit might be expected to act. The ideal situation would be a continuous level of prices which would allow a continuous fair margin of profit over costs which remained at continuously the same level. This condition, as I have explained, does not exist.

Next to it, and the second ideal situation, would be a constant margin of profit over the costs, which fluctuate. That is, that the prices would always be sufficient to allow a fair margin of profit over costs; but in periods of the cycle called "crises" and "depression" buyers will not buy on a basis of costs. The conditions of supply and demand will set the prices below the cost of production. To permit or to allow a fair margin of profit to be averaged over the long run, producers must secure a larger margin of profit in the periods of revival and prosperity; this to compensate for the loss during the period of crisis and depression.

Since the purchasers cannot be compelled to purchase on a cost basis in periods of bad business, it would not be reasonable to force the producers to sell on a cost basis during periods of good business.

This outline that I have stated of the operation of the law of supply and demand throughout the business cycle was prepared by Mr. Gordon and myself as our result of study of authorities on the subject [fol. 1231] ject, and of our experience in the School of Business Administration. In substance it will be in accord with the views of the modern writers on the subject of Business Cycles.

The continuation of the chapter in the Report of the President's Conference on Unemployment and Business Cycles, by Wesley C. Mitchell will give practically the same conclusions as to the operation of the law of supply and demand in a business cycle, but in a less detailed form.

Q. Can you refer to any of the other authorities consulted?

A. Some of the other authorities consulted were Taussig.

Mr. Newman:

Q. Who is he?

A. He is one of the leading economists of the country. He is a professor at the Harvard University; and Marshall, who is a leading English economist; and the excellent works of the Harvard Committee on Economic Research, who have made studies of the actual statistics of supply and demand in a great many industries—supply, demand, price and production in a great many industries.

Q. Now, are you through with that subject?

A. Yes, I am.

Mr. Johnston:

Q. We have now reached the point, I believe, Mr. Keehn, where you were about to present an analysis of the supply, demand, price and production of the product of the Maple Flooring Manufacturers Association, to show the operation of the law of supply and demand in that industry.

A. Yes. In order to compare the prices of the product with the supply and the demand, of the product of the Maple Flooring Manufacturers Association, it was necessary to have some indices of the [fol. 1232] supply and the demand. We took, to represent supply, in this case, the stocks on hand of the fifteen identical members of the Association, which were used previously, or, whose new orders booked were used previously to represent the demand. To represent the demand in this instance, we used the unfilled orders at the end of the month, of the same identical fifteen members. The reason that we used the unfilled orders instead of the new orders booked, in this case, is apparent from the explanation that I gave previously of the effective sources of supply and demand, which was, namely, that while the new demand would be the genesis for the activity of the business over a long period of time, it would be the accumulated demand and the accumulated supply which would regulate the necessity for accepting new demand, and at what price the new demand would be accepted. The unfilled orders, obviously, would better represent this accumulated demand than would the new orders booked. That the stocks on hand are represented by the supply actually ready for sale there can be no question.

In presenting this subject we prepared three separate charts, the first one of which shows the stocks on hand, the unfilled orders, and production of these fifteen identical members of the Association, in actual figures, upon an arithmetic scale. The figures are in units of a thousand feet. On the same chart are presented the figures in graph form of the prices of product, in units of one dollar. While we did not use this chart in making our final conclusions, we thought it interesting in case a quantitative study of the amounts of supply and demand were desired.

[fol. 1233] Mr. Johnston:

Q. Is this the chart to which you refer (indicating)?

A. Yes, sir.

Q. And are these three tables attached, and a sheet showing the reference to other tables, the tables which accompany this chart, and which are reflected on the chart?

A. Yes, they are.

Mr. Johnston: I will ask that this chart be marked Defendants' Grant Keehn Exhibit 22 for identification.

(Said document was marked as requested.)

Q. Now, referring first, Mr. Keehn, to the tables, will you state where the data there expressed was obtained?

A. All of the data used in this connection was secured from the office of the Maple Flooring Manufacturers Association.

Q. That applies to all of the tables appended to this exhibit?

A. Yes. I might add that the justification for using the figures of fifteen members rather than the present total membership of twenty-two, was brought out in Mr. Gordon's testimony.

Q. And applies equally to this situation?

A. Yes, sir.

Q. Does this chart need any particular explanation?

A. No, I do not believe it does. It merely makes possible comparisons of actual quantities of supply and demand, in case that should be desirable in later discussions.

A. The red line representing unfilled orders at the end of the month, and the yellow line stocks on hand at the end of the month?

[fol. 1234] A. Yes, sir.

Q. And the two charts on the right hand side, one labeled "Production," and the other "Prices of the Product"?

A. We included both of those series, because later on in the testimony I will make a comparison of the connection of production to supply and demand, as I am interpreting how the price acted in relation to the supply and demand at the present."

(Said chart, together with tables appended, was marked Defendants' Grant Keehn Exhibit 22, and received in evidence.)

"The Witness: Another reason for the preparation of the three charts dealing with the same subject matter was that we felt the relative importance of this phase of the subject was so great that it would be desirable to show all the processes through which we put the figures. The same conclusions could be reached by a study of any of them but the chart on which the figures are the most refined presents the most accurate and the clearest basis for comparison. The second chart mentioned in this connection is one on which the series for stocks on hand and unfilled orders and prices of the product have been placed upon an index basis—1913 equalling one hundred per cent.

Q. Are these the tables showing the index basis, which are at-

tached to this map, which I now show you (indicating)?

A. Yes, they are.

Mr. Johnston: I ask that this chart, together with the two tables appended thereto, and the sheet showing reference to the other tables bearing upon that chart be marked Defendants' Grant Keehn Exhibit 23 for identification.

[fol. 1235] (Said documents were so marked.)

Q. How were these indices prepared, Mr. Keehn?

A. The average month for each series in 1913 was taken to equal one hundred per cent. The figures of all the other months in the period under consideration were taken as a percentage of that average month in 1913. That applied to all three of the indices under consideration.

Q. That is the same basis upon which the other indices that have been introduced in evidence here were prepared?

A. Yes, sir.

Q. And the data from which these indices were prepared was obtained in the same manner from the offices of the Association?

A. Yes, they were.

Q. Will you now state what this chart shows, Exhibit 23.

A. That chart shows the three indices, prices, supply and demand of the Maple Flooring Manufacturers Association, on 1913 basis, but uncorrected for any of the elements for which we later corrected them. It will serve the purpose, if desired, of showing the operation of the law of supply and demand as affecting price, in this connection, but not as clearly nor as accurately as the chart which will follow this, on which are plotted these indices, with certain corrections made."

(Said chart, together with the tables appended thereto, was marked Defendants' Grant Keehn Exhibit 23, and was received in evidence.)

"The Witness: On the third chart, in connection with the comparison of the fluctuations of the price of the product, on this chart the [fol. 1236] indices of the unfilled orders and the stocks on hand of the identical fifteen members, on 1913 basis, have been corrected, for a seasonal variation.

Q. Let us identify this now. Is this the index to which you are referring (indicating)?

A. The chart, yes, sir.

Q. Or the chart. And the indices there expressed upon the chart are attached thereto in three separate tables.

A. Yes."

(Said chart, and the indices attached thereto, were marked Defendants' Grant Keehn Exhibit 24, and was received in evidence.)

"Mr. Johnston:

Q. Will you now proceed, Mr. Keehn?

A. As I said, on this chart are plotted the indices of unfilled orders, and stocks on hand of the identical fifteen members of the Maple

Flooring Manufacturers Association, corrected for seasonal variations. Our purpose for correcting for seasonal variation was to better show the conditions of supply and demand. It is a fact that throughout the year, in the calendar months, there are recurrent oscillations, which are due entirely to either the difference in the days of the months, or due to climatic conditions. It might be argued that in connection with supply and demand this should not make any difference, for if a given supply exists in a month, and the given demand exists in a month, no matter what month that occurs in, the relationship would be the same. However, the manufacturers of maple flooring must know that in certain months the demand is normally high, and that in certain months the stocks on hand are normally [fol. 1237] low, for example. They, therefore, realizing the normality of the situation, would not increase their production, or increase their prices, under the circumstances. In other words, they make a mental adjustment of the conditions of supply and demand, based upon their knowledge of conditions in the industry. That mental adjustment, or mental process through which we have taken cognizance of in the correction of the indices of stocks on hand and unfilled orders presented in this chart. We have also on this chart made a correction upon the index of the prices realized by the members of the Maple Flooring Manufacturers Association on their product. We have corrected it for what we call a change in the level of the purchasing power of the dollar.

In comparing the price of the product with the supply and demand, the latter two series were in physical units of one thousand feet, and the price in units of one dollar. The one thousand foot unit was constant throughout the period, whereas the value of the dollar has changed. We appreciated, as any one will, that the purchasing power of the dollar is on a lower level today than in 1913. In order to determine whether or not the price fluctuations of the product have been in accord with the law of supply and demand, we wished to remove as much of the fluctuation in this price index as possible which did not result from changes in conditions of supply and demand, and therefore searched for some means of removing the changes due to the change in the general price level. The use of an all-commodity price index suggested itself, as it would represent the number of dollars required to purchase the same quantities of the same commodities [fol. 1238] at various times, and thus would measure the purchasing power of the dollar.

The purchasing power of the dollar, or the all-commodity price index, fluctuates from a variety of causes, including the changes in the condition of supply and demand of all the commodities whose prices are included in the index.

The change in the quantity of money would be another factor or influence in the changes in the purchasing power of the dollar. We did not wish to correct the price of the product for changes in the purchasing power of the dollar resulting from the cause of changes in the conditions of supply and demand for all commodities, because the purpose of the corrected index was for comparison with supply and demand. An example will make this reason plain. If we were in-

vestigating the change in the price of all commodities in relation to the change in conditions of supply and demand for them, and if we used the index itself as a means of correcting itself for fluctuation in the purchasing power of the dollar, the result would be a straight line; whereas, the prices of all commodities must have fluctuated from changes in conditions of supply and demand.

We wished to segregate, therefore, those fluctuations in the purchasing power of the dollar which resulted from changes in conditions of supply and demand, from those other factors affecting changes in the purchasing power of the dollar. We believed that the short fluctuations in an all-commodity price index would be primarily due to fluctuations in conditions of supply and demand, as over the long run the total supply and the total demand for all commodities should [fol. 1239] remain in approximately the same relationship.

The other factors in the fluctuations of the value of the dollar, principally changes in the quantity of money, for which we wished to correct the prices of the product, would be of influence primarily in the long time direction of movement, of an all-commodity price index.

We took, therefore, the all-commodity price index of the United States Bureau of Labor Statistics as being the best index of the purchasing power of the dollar, as it included the prices of such a great number of commodities. We secured the secular or long time trend of this index, by the method of least squares, explained by Mr. Gordon. We took the line of secular trend to represent the changes in level of the purchasing power of the dollar for which we wished to correct the price of the product. The method was to divide the index of the prices of the product by the ordinates of secular trend of the all-commodity price index for the particular months. This was possible, since both series were on a 1913 basis.

The effect of this correction can be explained somewhat as follows:

Imagine a relatively stiff yet flexible link chain attached to a straight stick at irregular intervals so that portions of the chain would protrude above and below the stick, in loops; imagine also the stick at an angle of about 30 degrees from horizontal—then imagine the higher end of the stick brought down and the lower end brought up so that its position would be horizontal. The chain would still be attached at the same points so that the fluctuations would be primarily the same.

[fol. 1240] To illustrate, on the two charts—the one which shows the index of the price of the product uncorrected, and that after correction, will show——

Q. That is, you refer now to charts 23 and 24?

A. Yes, sir, it can be seen that a straight line of best fit drawn through the uncorrected index of the price of the product, that on chart 23, would be at an angle from the horizontal, whereas a line of best fit drawn through the corrected index of the price of the product would be more nearly horizontal. If we had used the line of secular trend of the index of the prices of the product this line of best fit drawn through the curve would be exactly horizontal. We did not believe that the line of secular trend of the prices of the prod-

uct would be an accurate measure of the changes in the level of the purchasing power of the dollar, although for comparison purposes with conditions of supply and demand it might have been better. We did not believe it would be an accurate measure since it would be the secular trend of the prices of but one commodity, whereas the purchasing power of the dollar is more adequately represented by changes in an all-commodity price index.

In this correction the result has been merely to bring prices down to a lower level in recent years, when the value of the dollar has been relatively low, and to elevate the prices in the earlier years, when the purchasing power of the dollar was higher. As we are measuring fluctuations and not levels, in this comparison, this correction merely facilitates the comparison.

Q. In other words, the oscillations upon Exhibit 23 are the same [fol. 1241] as those upon Exhibit 24, substantially?

A. Yes, only in one case the oscillations will be about a line, in a more vertical position, than the line about which the oscillations existed in the second chart, or Exhibit 24. As I said previously, the same conclusions as to the relationship of price to supply and demand could be reached by a study of any of the three charts presented on this subject.

To discuss in detail, now, this Exhibit 24, which shows corrected indices, it can be seen that in the first part of 1912, demand was low, and the stocks on hand, which represent supply, were high; and as a consequence the price was falling. Throughout 1912 demand rose steadily, demand represented by unfilled orders, but suffered a temporary reaction in November and December, reaching its high level again in January and February of 1913. During the last half of 1912 stocks on hand, which represent supply, fell, and, after a lag, which we have explained to be natural, the price of the product began a gradual upward trend.

Throughout 1913 the trend of demand was downward, and, with the exception of the last four months, the trend of supply was upward; and as a result, and after the natural lag, the prices of the product reached the peak, in the middle of 1913, started downward. The stocks on hand, representing supply, fell off in the last four months, but not to as great an extent as did the demand, in the last part of 1913. The result of that falling off of supply is seen in the leveling of the prices of the product in the last two months of 1913.

Q. Falling off of supply?

A. Yes. Through the entire year 1914 the trend of supply, stocks, [fol. 1242] again was upward; demand—unfilled orders—after an abrupt jump to a high level in the first quarter of 1914, declined during the entire year. In the face of a situation of declining demand and increasing supply, the price of the product was forced to decline throughout the entire year.

In the first quarter of 1915, a reaction occurred. Demand increased, and supply declined. This condition was only temporary, and did not affect the price. In the middle of 1915, however, conditions again changed, the demand rising sharply, and supply dropping off. These factors caused the price to advance, after a short

period of lag. Through the first half of 1916, demand and supply merely maintained the levels secured at the end of 1915; and the price also remained levels secured at the end of 1915; and the price also remained level. In the second half of 1916, however, demand again advanced sharply, and supply fell off rapidly. The price, after a short lag, advanced. The trend of demand was downward in 1917. The trend of supply, with the exception of the first few months, was upward. Prices continued to rise, until this change in conditions was felt, in the middle of the year when the price, as could be expected, declined.

This condition continued through the early months of 1918. In March, April and May of 1918, demand again increased abruptly, with a concomitant falling off in supply. As a result the price of the product advanced sharply in May and June. In June, however, demand fell off heavily, and continued to do so for the remainder of the year. Supply, which had been falling off, increased again in the last half of the year. In consequence of these forces the price discontinued its advance in July, the month after the decline began in [fol. 1243] demand. This position was held by the price during the remainder of 1918 and the early part of 1919. In early 1919 a great change took place. Demand started a sharp advance, to an unprecedentedly high level, which lasted until January of 1920; and supply fell off precipitously throughout the entire year, to an unprecedentedly low level.

After a few months lag the price of the product inevitably rose, to unprecedented heights.

Beginning with the first month of 1920 demand reached its peak, and started to decline sharply; and supply reached its low point, and started a sharp advance. After a few months lag, during which the prices continued to feel the effect of the great accumulation of orders still unfilled, the price of the product inevitably fell, and continued to do so for the remainder of the year.

January, 1921, saw a slight reaction in both supply and demand, followed one month later, in February, by a reaction in the price.

Since the beginning of 1921 the reaction of the price to conditions of supply and demand has been particularly sensitive. Demand had reached an unprecedentedly low level by the end of 1920. The return of demand, which occurred in the first three quarters of the year, merely served to bring it up to an ordinary low level. Supply, which was already above normal, continued to rise during this period. As a natural result of these conditions, prices continued to decline, although less sharply. In September, October and November, [fol. 1244] 1921, demand rose sharply, and supply began to decline. This was followed, after two months lag, by a reaction in prices, which advanced slightly in November and December. In December, 1921, January and February, 1922, demand again decreased heavily. In December, 1921 and January, 1922, supply increased slightly. This increase was followed in January, February and March of 1922, by a slight decline in prices.

In March and April, demand again advanced sharply, and supply continued to fall off. One month later, in April, prices again re-

sumed the upward movement. From May to October the demand hardly more than maintained its level. Supply, for the first three of these months, continued to decline, and then merely maintained its level. Price, in consequence advanced less sharply, and in the last three months of 1922, advanced not at all.

In the last two months of 1922, and through February of 1923, the demand increased rapidly, and supply declined sharply. As a result, after a short lag, prices advanced sharply.

Thus it is clear that the prices of the product of the Maple Flooring Manufacturers Association fluctuated in harmony with the forces of supply and demand. It is apparent that, with practically every increase in the excess of demand over supply came, with a natural lag, an increase in the price; and with every increase in the excess of supply over demand came, with a natural lag, a decrease in the price of the product.

It can be noted that in the latter part of '18 and the early part of 1919 the price of the product did not decline, but remained level, [fol. 1245] while demand was decreasing and supply was increasing. It must be remembered, however, that at this period the cost of the raw materials and the cost of manufacturing and marketing were upon a higher relative level than the prices of the product; that the prices of practically all other commodities were upon a higher relative level; and after the close of the War there was a condition of uncertainty. In addition to these factors, and perhaps most important of all, is the fact that during the latter half of 1918, there were restrictions placed upon building. Because of these restrictions people could not build, even though they so desired. A cut in price of the product at that time, therefore, would not have stimulated demand.

Moreover, it may be contended that the price of the product should not have gone as high in 1919 and early 1920. Unexpressed demand had accumulated because of the restrictions placed upon new building. It is necessary merely to regard the extent to which the unfilled orders increased in this period, to prove this statement. In addition to the accumulation of demand, production was low and the plant organizations had become disorganized throughout the years of 1918, 1917 and 1918.

It might also be contended that the price of the product in early 1920 should not have continued upon such a high level so long a time, in face of the drastic decline in demand and increase in supply. It has already been stated that such a condition was a reasonable one, because the manufacturers had on their books enough unfilled orders to maintain production at a high rate, without accepting new orders. Furthermore, stocks were low and could not be brought up to normal. [fol. 1246] Costs were still high, and many of them rising. It would be unreasonable to expect a producer to cut his prices, in face of these circumstances, until such a step became an absolute necessity.

That ends the discussion of the relation of the price of the product of the Maple Flooring Manufacturers Association to the demand for and the supply of it.

Q. You spoke about correcting this chart, Exhibit 24, for seasonal variation. Was that correction made in the same way that Mr. Gordon has heretofore described in his testimony?

A. Yes, the same statistical method was applied as in the case of the new orders booked—which Mr. Gordon discussed.

Q. So that it is not necessary to go into that any further?

A. No, sir.

Q. Now, what subject did you next consider in connection with the operation of the law of supply and demand?

A. Well, we did not believe that we would be justified in testifying that the law of supply and demand had operated in a free and unobstructed manner, without giving some consideration to the fact of production, because of the two forces, supply and demand, supply might be under the control of the producer of the particular commodity. It is by control of the supply that a monopoly operates and manipulates its price. We therefore went into the subject of the relation of the production of the Maple Flooring Manufacturers Association to the conditions of supply and demand, to determine whether or not the production rate had been increased when demand was large and supply small, and whether or not the production rate [fol. 1247] had been forced to decrease when the supply was large and the demand was low. In making this comparison we used three charts similar to those used in comparing price with supply and demand. The first one is on the arithmetic basis, and has been described previously. It is Exhibit No. 22, I believe.

Q. Yes. Before you go into these charts, showing the relationship of production to supply and demand, I call your attention to a table which is designated "Monthly Ordinates of Secular Trend of 'all-commodity price index'".

A. That table represents the ordinates of secular trend of the United States Bureau of Labor Statistics all-commodity price index, which we used to correct the prices of the product of the Maple Flooring Manufacturers Association for what we call the changes in the level of the purchasing power of the dollar. Those figures were divided into the index of the prices of the product of the M. F. M. A. the figure for the particular month being divided into the respective figure of the index of the product."

(Said table marked Defendants' Grant Keehn Exhibit No. 25 and was received in evidence.)

Q. Now, will you state a little more fully than you have just what you did in the preparation of these indices and the charts to represent the same.

A. As I said, the first chart, which is Exhibit No. 22, shows production, stocks on hand and unfilled orders, on the arithmetic scale. A second chart was prepared, in which those three series were placed upon an index basis, 1913 equaling one hundred per cent. The third [fol. 1248] chart in this connection shows those three indices on a 1913 basis corrected for seasonal variation—for the same reasons as they were corrected in the earlier chart, wherein prices and demand and supply were compared.

Q. Now, I will show you the first of these two latter charts that you have been referring to, and the tables or reference to tables accompanying the same, which chart, together with the tables and references to tables accompanying the same I will ask to have marked Defendants' Grant Keehn Exhibit 26 for identification, and ask you to state again just what chart Exhibit 26 shows, in a general way."

(Chart, with tables appended thereto, marked Defendants' Grant Keehn Exhibit 26 for identification.)

"A. That chart, which shows the indices uncorrected for seasonal variation, shows in a general way that the production of the members of the Association has acted in accord with the law of supply and demand. It will be noticed upon this chart that a dashed line is drawn horizontally through, on the chart, between the horizontal lines marked 90 and 100. This line represents the normal production capacity of the fifteen members whose statistics we used. The figure for the normal production capacity was eight million eight hundred and eighteen thousand feet. That figure was secured from the office of the Association. It can be noted, by a mere glance at the chart, that normal capacity in this connection means far greater than average capacity, for a great portion of the white line, representing production, is below the normal capacity line.

[fol. 1249] Q. Now, the figures shown on this chart you then subjected to the treatment you stated a moment ago you gave to those on the chart comparing prices——

A. Yes.

Q. (Continuing:) —with the law of supply and demand, namely, the corrections for seasonal variation and the correction for the purchasing power of the dollar.

A. No. We have corrected it here only for seasonal variation, because there is—in none of the series is the unit the dollar. In all of the three cases the unit is one thousand feet, which remained constant throughout.

Q. Therefore it was not necessary to correct——

A. It was unnecessary to make corrections for changes in the level of the purchasing power of the dollar.

Q. And this is the chart which you produced here, together with the tables accompanying the same, or references to tables, and which shows the same data as Exhibit No. 26, with the corrections for seasonal variation?

A. Yes."

(Said Chart, together with accompanying tables was marked Defendants' Grant Keehn Exhibit 27 and received in evidence.)

(Defendants' Grant Keehn Exhibit 26 for identification was received in evidence as Defendants' Grant Keehn Exhibit 26.)

'Mr. Johnston: The reference to these tables, Mr. Thompson are due to the fact that the same tables occur in prior depositions, and therefore we have merely put a sheet in showing that the other tables are so and so.

The Witness: They occur in prior exhibits.
[fol. 1250] Mr. Johnston: Yes, attached to prior exhibits, so that it is unnecessary to repeat them.

Q. Will you now examine this chart, Exhibit 21, and interpret it for us (indicating)?

A. Beginning with 1912, in the first half of that year, supply was high, demand was low, but advancing steadily; and the production was a round capacity. During the latter half of the year supply declines, demand felt a reaction, which was only temporary, and production, after a momentary decline, advanced because of the falling stocks. Throughout the year 1913 the trend of demand was down. For the first three quarters of the year the trend of supply was up. Decreasing demand and increasing supply caused production to decline slightly throughout the entire year. Decrease in supply, which occurred in the last months of the year, made necessary an increase in production, even though demand was low.

Demand advanced sharply in December of 1913 and January and February of 1914. Throughout the remainder of the year, however, the trend of demand was shortly downward. Supply increased steadily throughout the entire year. The natural result of this condition was a reduction in the rate of production, which declined, save for a momentary increase in response to temporary reactions in supply and demand, throughout 1914.

Demand rose sharply in January and February of 1915, and supply declined. As a result production increased in April and May. In April, May and June, the demand fell off, and the supply increased. Production, therefore, declined in May, June, July and August. From June through the remainder of the year demand [fol. 1251] increased sharply and supply fell off. Production, in response to this condition, increased above normal capacity, and continued upwards from August throughout the year.

In the first half of 1916, demand fell off slightly, and supply was maintained on the level reached at the end of 1915. As a result production returned to normal, and dropped below. The second half of the year, however, saw a sharp advance of demand, to a new high level, and a rapid decline of supply. Production consequently increased to full capacity.

Throughout the year 1917, the trend of demand was downward sharply, with the trend of supply upward. The rate of production, as a natural result, declined steadily throughout the year, with the exception of a slight reaction at the very end as a result of a momentary return of demand. This condition continued throughout the first two months of 1918. In March, April, May and June, the supply declined. Demand increased in March, April and May. May, June, July and August, therefore, saw an increase in the rate of production. This increase was only temporary: with a precipitous drop in demand from May throughout the end of the year, and a concomitant increase in supply, the production declined to a new low level.

From February throughout the entire year 1919 demand increased as an extraordinary rate, and from the new low level it rose to a

new high level. This action was caused by the removal of the restriction on building, which had forced demand for new construction to accumulate unexpressed supply, during this year, declined drastically, to a new low level. Production increased sharply throughout the entire year.

[fol. 1252] It has been clearly indicated, throughout this study, that production is less elastic than demand, and requires time to become adjusted. It has been seen that production has invariably lagged after changes in supply and demand. Moreover, the drastic decline in demand, and consequently in production, which had been continuous throughout the two years previous to 1919, caused the Maple Flooring Industry to become disorganized. Plants were barely working, in a disorganized condition, and were unprepared to meet this tremendous demand. Production therefore could not rise to capacity in a few months, nor should it have done so were such a performance possible. The experience of the past two years was enough to make any producer discouraged and pessimistic. They could not be expected to have viewed a return of demand as permanent, until that permanence had been clearly established. Even before the permanence of demand was assured, the producers increased production at a tremendous rate, but because of physical inability they could not produce at capacity in immediate response to the demand. A full appreciation of these factors provides an explanation of the slower increase in 1919 in the rate of production than in the rate of demand.

In 1920, the demand declined precipitously from the high level reached in January of the same year, to a new low level. As a result of the fall in demand, and the continued high level of production supply advanced rapidly throughout the entire year. Even in the face of such a tremendous fall in demand, and the increase in supply, the rate of production was maintained at normal capacity during the first quarter of 1920. In the second quarter the rate of production fell off sharply, but in the third quarter it was again increased to a higher level. With conditions as they existed in the last quarter of 1920—supply piled up, and demand unprecedently low—it would have been ridiculous to have maintained production at the level of the third quarter. The production was decreased in the last quarter of the year, and reached a new low level.

This decrease of production, and the fact that demand ended its decline, caused a temporary decline in supply in the first two months of 1921. In March the demand increased sharply, followed the next month by a sharp increase in production. In April a reaction took place in demand. It again advanced in June, with a slight setback in July. The sharp increase of production in March was not maintained, because of the reactions in demand. Production therefore advanced but slightly in April, May and June. Supply meanwhile was piling up. This condition, coupled with the frequent reactions in demand, caused the production rate to decline in July, August and September. The substantial increase in demand assured its permanence, however, and with supply slightly lower, the pro-

duction rate was increased to normal in the last quarter of the year. Demand, which had been increasing steadily, fell off in December, and supply rose. The sharp decline in demand in the last month was continued in January and February of 1922. Production therefore declined one month later, in January, February and March. Supply, which had increased in January, continued to decline. March, April and May brought a sharp increase in demand. This increase was followed by an increase in production, which reached [fol. 1254] normal capacity in June. The sharp upward movement of demand halted, and remained upon approximately the same level during the entire second half of 1922. Production, after a temporary decline in July, advanced above normal, with a slight upward trend throughout the remainder of the year. The trend of supply was downward during the entire year.

In January, 1923, demand advanced sharply, and supply diminished. Production consequently was increased to full capacity.

Thus it is apparent that the production of Maple flooring has fluctuated in accord with the factors of supply and demand. Increases in demand have been followed, with a regular lag of one or two months, by increases in production. In like manner decreases in demand have been followed by decreases in the rate of production.

Mr. Johnston:

Q. There are one or two questions that I wanted to ask you of a general nature, regarding these tables and charts. You stated, I believe, that it has been part of your work for the last two years to examine and to prepare indices of this character and charts of the general character of those produced in connection with your testimony and the testimony of your predecessor?

A. Yes, sir—in my work at the Harvard Graduate School of Business Administration.

Q. In the production of these charts and these tables you have personally checked the figures?

A. Yes, sir.

Q. And to these tables and these charts correctly set forth the *the* [fol. 1255] facts as you have received them and as you have collected them and tabulated them?

A. Yes, sir.

Q. Now, having reference to the subjects concerning which you have testified directly, namely, the comparison of the prices of the product with the prices of competing wood flooring, and the comparison of the prices of the product with the supply and demand of the product, and the comparison of the production of the product with the forces of supply and demand, have you reached a conclusion as to what those facts, as you have developed them, show, with respect to the existence of a control of the prices of the maple flooring manufactured by the members of that Association?

A. I might answer that by a short recapitulation of my testimony on the subject. The first comparisons that were made in my testimony were of the prices realized by the members of the Maple Floor-

ing Manufacturers Association with the prices of competing wood floorings. Those comparisons indicated that in general the fluctuations of the prices of the product and of the prices of the competing wood flooring have been practically identical, but that the prices of the product had not risen as sharply in the up-swing in 1919, and in 1921, as had the prices of competing wood flooring. It was also pointed out that there was an apparent lag of the prices of the product behind the prices of the competing wood flooring. In the comparison made of the prices of the product, with those elements which go to make up its cost, a comparison of the price of the product with the prices of rough maple flooring, that is, of raw materials, was made.

[fol. 1256] This comparison indicated a practical identity of fluctuation movement, except in the years 1917 and 1918 and the first half of 1919. The fact that the product was on a lower relative level during this period was explained by the greater specialization of the product—its greater dependence for demand upon the volume of new building construction in the United States, and the inevitable effect which the failure of this demand in these two years had upon its price. It was found that the price of the product in early 1920 declined, while the price of the raw material continued to rise. A similar situation was found again in late 1921, when the price of the product continued to decline, in the face of the advances in the cost of the raw materials, rough maple lumber. The price of the product, also, was compared to the other manufacturing and marketing costs, not including raw material. The index used in this comparison was of the average manufacturing and marketing costs of the members of the Association. As might have been expected, it was found that these two indices only fluctuated together in general directions, and that during the years of low volume of building and consequent failure of demand for the product, the price of the finished maple flooring was on a distinctly relatively lower level than the average manufacturing and marketing costs. In 1920 the price of the product declined distinctly, while the cost of the average manufacturing and marketing—the average manufacturing and marketing cost continued to advance for over a half a year thereafter. From the point of view of raw materials, and other manufacturing and marketing costs, it was found that the price of the [fol. 1257] product was reasonable, and that in the years 1917, 1918, and the first half of 1919 a higher price could reasonably have been realized by the members of the Association for their product, had they the ability to set or fix the price.

A study was made of the factors of supply and demand, as these forces affected the price and production of the product. A measure of criterion was developed, by which to judge whether or not the prices and production of the maple flooring product of the members of the Association had reacted and fluctuated in accord with the free operation of law of supply and demand. A study and analysis of the immediate demand and supply of the product was made. This study clearly showed a free operation and reaction upon the part of prices and production of the product to these conditions.

To sum up finally, therefore, the study which Mr. Gordon and I made developed data and material such as to clearly indicate that the members of the Association did not have the ability to continuously control the prices of maple flooring, or, even if it be assumed that they had such ability, comparisons with other prices, with prices of competing floorings, with the costs of maple flooring, and with the conditions of supply and demand of that product, do not offer any evidence of fixation or unreasonableness.

Q. Have you considered the question of whether or not there has existed, among the members of the Association, during the period of your inquiry, from 1913 to 1923, a practical uniformity in the net f. o. b. selling prices of such members?

[fol. 1258] A. Yes; we secured, from the office of the Association, figures showing the range of f. o. b. mill selling prices of members of the Association at various months throughout the period under consideration. We plotted, or charted, the prices secured by various members on various grades, in various months. This chart, which we prepared, was in the form of a bar chart. By a bar chart is meant a series of columns, with the levels equalling respectively the prices secured by the various members.

Q. Is this the chart, which I show you (indicating)?

A. Yes, sir."

(Said chart marked Defendants' Grant Keehn Exhibit No. 28, and was received in evidence.)

"The members of the Association are grouped in three groups, according to their geographical location. On this chart the groupings have been made so that the price secured by the various members within one geographical group can be more easily compared. It is to be noted on this chart that the comparisons which are made are of fixed relationships—that is, an actual quantitative measurement is made of the prices secured by the various members.

Q. And therefore this form of chart is particularly applicable?

A. Is particularly applicable, for the type of comparison. In explanation of the chart, prices in March of 1920 of 13/16 by 2¼ Clear grade maple flooring among members in Group A, which includes mills in Eastern Lower Michigan, ranged from \$154.38 to \$190.36, a spread of \$15.98, or twenty-three per cent.

Q. Those prices are per thousand feet?

A. Per thousand feet, yes. In Group B, which includes mills in [fol. 1259] Western Lower Michigan, the prices for this grade of flooring, in that month, ranged from \$154.57 to \$176.36, a spread of \$21.79, or 14 per cent. In Group D, which includes mills in Upper Michigan and Wisconsin, the range in the prices of this grade, for this month, was from \$183 even to \$217.50—a spread of \$34.50, or 19 per cent. And for all of Michigan and Wisconsin mills it ranged from \$154.38 to 217.50, a spread of \$63.12, or 41 per cent.

Q. Group A is the first group?

A. Yes, sir. Group A, in the first section of the chart which compares the prices realized among members for Clear 13/16 by

2¼ inch maple flooring, for March, 1920, includes all those mills numbered from 2 to 49—all members in between not being included. Group B, mills 3 through 30; and Group D, 4 through 44.

Mr. Darby:

Q. Where is Group D?

A. Group D, in the upper left hand section of the chart, comprises the bars beginning with 4 and ending with 44. There is no Group C.

Q. Does the same grouping apply to each one of the other charts?

A. Yes, sir.

Q. Each one of the other months, I mean, shown upon the chart?

A. Yes. For each month, in the grade shown.

Q. The same numbers appear?

A. Yes. In some cases the same numbers do not appear, but those members reporting in each group are included in that group on the chart; and the groups are placed respectively in the same position on the six sections of the chart.

[fol. 1260] Q. In the same location?

A. Yes. To continue the discussion of the Chart,—prices in March, 1920, of 13/16 by 2¼ No. 1 grade maple flooring, among members in Group A, ranged from \$173.50 to \$194.43, a spread of \$20.93, or 12 per cent. In Group B they ranged from \$149.58 to \$184.77, a spread of \$35.24, or 24 per cent. In Group D, ranged from \$172.91 to \$198.75, a spread of \$23.84, or 14 per cent. And for all Wisconsin and Michigan mills, ranged from \$149.56 to \$196.75, a spread of \$47.19, or 31 per cent.

Prices in February, 1920, of 13/16 by 2¼ inch Factory grade maple flooring, among members in Group A ranged from \$119.62 to \$144.75, a spread of \$25.13, or 21 per cent. In Group B, ranged from \$124.00 even to \$131.50, a spread of \$7.50, or 6 per cent. And in Group D ranged from \$115.20 to \$147.20, a spread of \$32.00, or 28 per cent. And for all Michigan and Wisconsin mills, ranged from \$115.20 to \$147.20, a spread of \$32.00 or 28 per cent.

This month, or these two months which were taken were taken because of the fact that they were at the peak of prices. To compare the range of prices secured by members of the Association at a low point in prices, March, 1922 was taken. The same condition existed, namely, that there was a lack of uniformity of net f. o. b. mill prices for the different grade of maple flooring.

Prices in March, 1922 of 13/16 by 2¼ Clear grade maple flooring, among members in Group A, ranged from \$83.95 to \$85.20, a spread of \$1.25, or 1½ per cent; in Group B ranged from \$84.78 [fol. 1261] to \$88.29, a spread of \$3.51, or 4 per cent; in Group D ranged from \$85.30 to \$93.22, a spread of \$7.92, or 9 per cent; and for all Michigan and Wisconsin mills ranged from \$83.95 to \$93.22, a spread of \$9.27, or 11 per cent.

In March, 1922, prices of 13/16 by 2¼ No. 1 grade maple flooring, among members in Group A, ranged from \$60.89 to \$64.30, a spread of \$3.41, or 6 per cent; in Group B ranged from \$59.88 to

\$68.69, a spread of \$8.81, or 15 per cent; in Group D ranged from \$58.93 to \$68.95, a spread of \$8.02, or 14 per cent; and for all Michigan and Wisconsin mills ranged from \$59.93 to \$68.69, a spread of \$9.76, or 16 per cent.

In March, 1922, the prices of 13/16 by 2¼ Factory grade maple flooring, among members in Group A, ranged from \$17.17 to \$19.77, a spread of \$2.60, or 15 per cent; in Group B ranged from \$17.60 to \$25.06, a spread of \$7.46, or 42 per cent; in Group D ranged from \$15.17 to \$22.27, a spread of \$7.10, or 47 per cent; and for all Michigan and Wisconsin mills ranged from \$15.17 to \$25.03, a spread of \$9.89, or 65 per cent.

Q. Now will you pick out Groups A, B and D, on the lower brackets in this chart, Exhibit 28, being the prices shown for the months of March, 1922?

A. Included in Group A would be numbers 24 and 33. Included in Group B would be numbers 4, 5, 14, 28, 30, 37 and 47. Included in Group D, numbers 4, 7, 23, 34, 42, 44 and 50. In the March, 1922 chart showing the range of prices of No. 1, 13/16 by 2¼.—Group A comprises numbers members 24, 33 and 49; group [fol. 1262] B includes members 3, 5, 14, 26, 30, 33 and 47; Group D includes members 4, 7, 23, 34, 42, 44 and 50. For Factory grade, in March, 1922, the grouping is apparent, by the spacing of the columns.

Q. Yes, the first being A, the second B, and the third D?

A. Yes.

Q. Now, the reason that the number varies, in March, 1922, from the number comprising the same group in 1920 is what, Mr. Keehn?

A. Will you repeat the question.

Q. The reason that the number varies, in the group, in 1922, from the number in the same group in 1920?

A. The reason for that might be that while a member had sold some of No. 1 grade, 13/16 by 2¼, he might not sell any factory even in the same month, and therefore he would have no recorded price for sales of Factory, of that particular month. It would apply the same way as between years: a member might have sold some No. 1, 13/16 by 2¼ grade maple flooring in March, 1920, but had not sold it in March, 1922; he would be included in the chart on the upper level, but not in that of the lower level. That explains the difference in the number of members per group.

Q. And was there any significance in taking the month of March for this comparison, over any other month?

A. No, except that March in 1920 was at a relatively high level of prices, and March, 1922, at a relatively low level of prices.

Q. And from your knowledge of the data in the files of the Association would you say that the same relative situation would exist if comparison were made in other months?

[fol. 1263] A. Yes, the same relative percentage of range.

Q. And other years?

A. To bring out that point, we have prepared three charts showing the range of prices among members of the Maple Flooring Manufacturers Association throughout the period, for the three grades,

Clear, No. 1 and Factory. I might say that these charts show the range among Michigan and Wisconsin members of the Maple Flooring Manufacturers Association.

Q. Are these the three charts to which you refer, Mr. Keehn (indicating)?

A. Yes, sir.

Mr. Johnston: Let us have these marked. We are going to offer all these charts, and the tables with them as one exhibit, since they are all the same, only each one refers to a different grade of flooring. We will ask that these three charts, and the tables accompanying the same, be marked Defendants' Grant Keehn Exhibit 29 for identification.

(Said documents were marked as requested.)

A. I might say that these three charts are used for two purposes; the first one is to show the range of prices, and in that regard the charts should be considered in the same manner as if there were no red lines upon them.

Q. That is, for the purpose of showing the range of prices as between the members?

A. Yes sir. Now, taking them up one at a time. This is Exhibit 29, I believe (indicating)?

Q. Yes.

A. The first one shows the range of f. o. b. mill selling prices, of Michigan and Wisconsin members of the Maple Flooring Manufacturers Association from 1913 to 1923, for Clear 13/16 by 2¼ flooring. It shows that at no time throughout the period has there been a uniformity of f. o. b. mill selling prices among the members of the Association for this particular grade.

Q. Just how is that shown, Mr. Keehn?

A. There are two lines upon the chart, for consideration in this respect. Both lines are white. The top line—or the one which is on the relatively higher level throughout—represents the price secured by the member who realized the greatest price in each particular month.

Mr. Gordon: Average price, was it not?

A. Whose average price for the month was the highest. And the white line which is on the relatively lower level throughout shows the average price which was lowest realized among the members of the Maple Flooring Manufacturers Association.

Mr. Johnston:

Q. What does the second of these three tables show?

A. The second chart indicates an exactly similar situation for No. 1 grade of 13/16 by 2¼ flooring. The third chart indicates the same situation with respect to the Factory grade of 13/16 by 2¼ flooring.

Q. Now, referring at this point to the first three of the four tables,

which are appended to and comprise a part of this exhibit, what do those tables contain?

A. Those tables contain the range of f. o. b. mills selling prices of Michigan and Wisconsin members of the Maple Flooring Manufacturers Association, monthly, from 1913 to 1923, on a dollar basis. They include the range of prices for the three grades, Clear No. [fol. 1265] 1 and Factory 13/16 by 2¼ inch face maple.

Q. And all of that data was secured from the offices of the Association?

A. Yes, it was.

Q. Now, in addition to the range of prices of members—Wisconsin and Michigan members—

Mr. Thompson: Pardon me. May I ask a question? Do those, again, refer to average prices, as the charts do, as you said, or what?

Mr. Johnston: Oh yes. The chart contains or sets forth the figures of the representatives of the figures which appear upon the tables. Do they not?

A. I did not quite get Mr. Thompson's question, so I would not want to answer that.

Mr. Thompson:

Q. You testified, in answer to a question a minute ago, that your white figures here referred to the high and low average prices.

A. Well, the way the prices are here compiled is as follows: The average price of each member is compiled for each month, by the member. He sends in what his average price, realized, has been for the month. All the members do the same thing. And as a consequence there are these several figures, each one an average of the monthly prices secured by the members of the Association. If, for example, they range \$25, \$27, \$28 and \$31, to represent the range we would take \$31, as being the high price secured and \$25 as being the low price secured; and the range would be the difference, of course—\$6.

[fol. 1266]

Mr. Johnston:

Q. But I understand that, for the purposes of comparison here, you have selected that member who had the highest average price for each month?

A. Yes.

Q. To represent the high. And that member who had the lowest average price for the corresponding month to represent the low; and have then graphed those figures upon this chart?

A. Yes sir.

Q. Now, there also appears upon this chart, Mr. Keehn, a red line, which you have designated "Average Cost." Will you tell us where you obtained the figures which are represented on the chart by that line?

A. Those are what is known as average costs. They appear in

the tables of test runs which the Association puts out at infrequent intervals; they are called,—in the Government's petition against the Maple Flooring Manufacturers Association,—“recommended prices;” so we have called them “average costs,” or, as called in the Government's petition, “recommended prices,” of the Maple Flooring Manufacturers Association.

Q. And these are the prices ascertained as the result of these test runs from time to time?

A. Yes sir.

Q. As being the actual cost of production?

A. Yes sir. In explanation,—information as to the composition of these average costs,—it might be well to have explained by some one from the Association offices. I have merely secured it second hand.

[fol. 1267] Q. But you have taken this data, shown upon the fourth table attached to this exhibit, from the records of the Association?

A. Yes, sir.

Q. And have then expressed the figures thus shown upon these three charts, by the red line?

A. Yes, sir. On each chart the average cost, or, as called in the Government's petition, “recommended prices”, have been plotted with the range of prices for that particular grade.

Q. And, briefly, what does that show, upon each of these three charts?

A. It shows that in a great majority of the cases there were members selling above the average cost, or, as called in the Government's petition, “recommended prices”, at the time at which the average costs were issued; as, for example, on Chart 1 of Exhibit 29, in, I believe it was January of 1915, one of these tables of test runs was sent out; and, for the Clear 13/16 by 2¼ inch maple flooring the average cost was \$40, and at that time, or in the month of January, there was at least one member selling above. The reason I say “at least one” is because the high price represented on the chart was for but one member, it being the highest secured in that month. Another example might be given,—in March, 1920, when the average cost of the Clear grade, sent out on the table of test runs, was \$154; and in that case practically all of the members were selling above that price, for that grade, as can be seen on the chart,—that the red line barely comes in contact with the white line, representing the average low price for the lowest member in that month. [fol. 1268] Q. And the reason that this red line takes a straight course, horizontally or vertically, is that only at infrequent intervals are these test runs made?

A. Yes. And when a test run was sent out, from that date until the next we made a horizontal line at the level of the average cost included in that table of test runs. At the date at which the new table of test runs came out we made a vertical line, from the old average cost to the new average cost.”

"Mr. Johnston:

Q. Does this chart indicate that at various times all of the members, of a considerable part of the members were selling at a price below that average cost?

A. Yes. As an example, in 1921, when the red line appears considerably above both high and low prices, for the early part of the year. That feature can be brought out in an exhibit which appears later, wherein the product is compared with the average cost of the product over a period of years."

(Said three charts and four tables, accompanying the same, are marked as Defendants' Grant Keehn Exhibit 29 and received in evidence.)

"Q. Now, you made reference to a further chart, that was prepared for the purpose of showing the index of the prices of the product as compared with the index of its average cost?

A. Yes, sir. This chart (indicating), which is exactly the same as Exhibit No. 18, with the exception that on it has been plotted the average cost of the product. That is, on this chart appear indices of the prices of competing wood floorings, and the index of the price [fol. 1269] of the product—on which chart the average from March, 1919 through May, 1923, equals 100 per cent. The base which was used for the average cost of the product was the average price of the product from March, 1919 through May, 1923. It is represented on the chart by the white line, which moves only in a horizontal or vertical direction. The white line, which fluctuates, is the price of the product. The identity of the other lines can be seen from a study of the legend. This chart indicates that the price of the product fluctuated at all times, and was not above the average cost all the time—in fact being below, during a considerable portion of the time. It also indicates that when an average cost table was sent out to the members that rises in prices occurred in the indices of all the floorings—all of the competing wood floorings, including the price of the product. This is evident in 1919, in May, when an average cost table was sent out, on which the average cost was higher than that on the average cost table previously sent out. At this point, all of the indices of the competing wood floorings, as well as the index of the price of the product, rose. In 1920, in March, a new table of test runs or average cost was sent out. At this time the price of the product was considerably above the average cost sent out on the table of test run. The other four competing wood flooring price indices were also on a relatively higher level. In 1921, in September, another average cost chart was sent out, and all five price indices—including the price of the product, but also the indices for the prices of the four competing wood floorings, rose, within a month or two.

The same situation occurred in May, 1922, in October, 1922, in [fol. 1270] February, 1923, and in March, 1923. In other words, there has occurred, when a table of average costs has been sent

out to the members, a rise in the prices—not only in the price of the product of the Maple Flooring Manufacturers Association, but also a rise in the prices—the price indices of four competing wood floorings; in other words, it would be no more possible to say that the tables of average costs prepared by the Association have made the prices of the product rise than it would to say that they had made the price of competing wood floorings rise—and the latter statement would, of course, be absurd—this because the indices of all five wood floorings have fluctuated practically identically throughout this period, 1919 through 1923.

Q. Does this chart also indicate that the prices have not, in general, followed along the same line as the so-called average cost, but have departed therefrom, apparently in unison with or in response to the operation of the law of supply and demand?

A. They have departed from the red line representing the average cost, but have moved in the general direction. This is only to be expected, because the average cost is prepared from the average cost of the members of the Association, and it is only natural that the price would fluctuate in general similarity with the cost of producing the product. But it would appear that the price has moved in accord with the operation of the law of supply and demand, rather than in accord with these average costs that have been sent out from the offices of the Association."

(Comparison of the Index Prices of Product and the Index of Average Cost, with the price of Competing Wood Floorings were marked Defendants' Grant Keehn Exhibit No. 30 and received in evidence.)

[fol. 1271] "Q. Mr. Keehn, reference has been made, during the course of your examination, and the examination of Mr. Gordon, to the fact that some of the members of the Association own standing timber, and cut their own maple lumber, from which they manufacture maple flooring. What can you say upon the relevancy of that statement of that fact, if it be a fact, to the question of the price of maple flooring, as to whether it is or is not unreasonable, or the inquiry into the reasonableness of the price of maple flooring?

A. Well, I should say that the processing of the hard maple lumber into maple flooring was an entirely separate manufacturing process from that of making the timber into hard maple lumber. This is apparent from the fact that some manufacturers of maple flooring include both operations, but some of them purchase on the open market the hard maple lumber and process it into maple flooring. The question of profits with respect to the two operations is more or less an accounting matter.

Q. Is there any distinction between the price which the man who owns his own timber and processes it into maple flooring is entitled to charge, and the price which the man who buys his rough lumber in the market is entitled to charge, for the finished product, maple flooring?

A. By no means—there should be no differentiation, because there will be only one market price, which will include the costs of what is known as the marginal producer. By marginal producer is meant that last producer who will be induced to produce and can produce, at a profit, at the market price. It is used in connection with changes or with differences in the expenses of production. The members who own their own timber and process it into hard maple lumber, [fol. 1272] or rough maple lumber, and then into maple flooring, could, if they were not permitted to secure a profit on both operations, sell their rough maple lumber in the open market, and secure a profit, selling it at the market price; they could then purchase the rough maple lumber and process it into maple flooring, selling it at the market price for maple flooring. It is only reasonable that they should secure a double profit, because of the double operation, that is, more profit than a manufacturer who merely buys the rough maple lumber in the open market and processes it into maple flooring, this because he has need of a greater organization, he has need of a greater investment, and it also necessitates greater managerial worries and functions than in the case where there is only the one operation. To continue, on that: It is only reasonable that the manufacturers who perform both functions in this particular industry, namely, cutting the rough lumber from the timber, and the processing of it into flooring, should consider as their raw material costs the market price which the rough maple lumber which they are using brings.”

[fol. 1273] DEPOSITION OF ALBERT JOHN HETTINGER, JR., TAKEN, PURSUANT TO STIPULATION, AT WINTHROP HALL, CAMBRIDGE, MASSACHUSETTS, ON NOVEMBER 22, 1923

ALBERT JOHN HETTINGER, JR., being duly sworn, testified as follows:

Direct examination.

By Mr. Johnston:

“Q. Your name is?

A. Albert John Hettinger, Jr.

Q. Where do you live, Dr. Hettinger?

A. In Belmont, Mass.

Q. What is your occupation?

A. Statistician.

Q. With what institution are you connected?

A. Harvard University.

Q. And in what capacity?

A. Assistant Professor of Business Statistics.

Q. How long have you been connected with Harvard University in the capacity of Professor or instructor?

A. This is my fourth year.

Q. Is all of your work in the Graduate School of Business Administration?

A. That is all my university work, yes.

Q. And are you at the head of that department?

[fol. 1274] A. I am.

Q. And the general scope of the work in that department is what?

A. The general scope of it is twofold; that is a study of external statistics, which really comes down to a study of the business cycle; and a study of internal statistics for purposes of control with any given concern and really trying to link the two together.

Q. What work outside of your professional work in the Graduate School of Business Administration have you done and are you now doing?

A. Well, for several years I have acted as consulting statistician for the Federal Reserve Bank of Boston and I am now connected with the Ludlow Manufacturing Associates in the same capacity; and then for several years in miscellaneous consulting work, statistical in character.

Q. Have you contributed any articles to periodicals upon statistical subjects?

A. I have not. I am interested in the internal control primarily and we are pioneering there.

Q. Are you connected with any of the publications that are put out by the Graduate School?

A. No, except very indefinitely, insofar as the faculty itself handles the publication. That is, Professor Tosdal is the editor and definitely in charge.

Q. Do you have any connection with the Harvard Committee Economic Research?

[fol. 1275] A. No definite connection whatsoever. I am in fairly close contact with Professor Parsons, Prof. Bullock and Prof. Vanderblue, but not in an official capacity.

Q. Where did you receive your preliminary education?

A. At Stanford University. That is, I took my A. B. there and my A. M. and took my Doctor's degree from Harvard in business economics.

Q. That is you specialized in business economics in your graduate work?

A. Yes.

Q. Did you have any connection with the Railroad Administration during the war?

A. Yes, I was with the Operating Statistics Section as statistician from the time of its organization until I went over to the Director-General's office as statistician to the Financial Assistant to the Director-General. All told that was probably a little less than two years' experience there.

Q. Are you acquainted with Mr. Grant Keehn and Mr. Edward B. Gordon?

A. Very well, for a time dating really from their arrival in Cambridge, you might say.

Q. Did they take work under you and in your department?

A. Yes.

Q. I believe they both majored in statistics, didn't they?

A. Well, with the group system in the school, I do not recall. That could readily be determined. Each of them had as much statistics as was available and my supposition is that an investigation [fol. 1276] of the records would show a definite technical concentration there.

Q. You have read, have you not, the depositions which Mr. Gordon and Mr. Keehn have given in this case of the United States of America vs. the Maple Flooring Manufacturers Association and others?

A. Yes.

Q. And you have also examined the exhibits which accompanied their depositions?

A. Yes, I have.

Q. Turning to the first of these exhibits, which is Exhibit 6, with certain tables appended thereto, Exhibit 6 is a table upon which have been graphed certain price indices, first of the product of maple flooring, then price indices of all-commodity prices, all building material prices and lumber prices. I want to ask you first, Dr. Hettinger, about the preparation and use of price indices in preparing statistics, particularly for price comparisons. Are such indices in general use by statisticians?

A. Yes, they are in general use; in fact it is the only feasible way of making a comparison.

Q. In this instance you will note that the tables appended use 1913 as a base equaling 100 per cent.

A. Yes.

Q. What can you say about the use of one year as a base in the preparation of price indices such as these are?

A. A choice of a base is thoroughly fundamental in that all comparisons are with that base period primarily; that 1913 is the last full pre-war year, and that in substantially all price comparisons [fol. 1277] and a great many of physical volume, by almost common consent 1913 is deemed the fair base, the most workable base to use. The Bureau of Labor Statistics in its revised index numbers bases prices up to date on the 1913 price level. The Federal Reserve Bank of New York in its studies has done the same thing, and it is commonly accepted.

Q. And the Bureau of Labor Statistics makes up price indices such as those which are used in the tables appended to and made a part of Defendants' Exhibit 6?

A. Yes, the Bureau of Labor Statistics is the recognized source for price comparisons. You really have four: Dun's, Bradstreet's, Prof. Irving Fisher at Yale and the Bureau of Labor Statistics; and of the four I think there is no question but what the Bureau of Labor Statistics covers the broadest base, has the soundest system of weighting and would be considered standard by most of us for most purposes.

Q. Now in arriving at the price index for the product of maple flooring Mr. Gordon and Mr. Keehn have taken the three grades and

sizes of maple flooring which are those commonly manufactured and sold and have, as you may recall from their report or from their testimony, weighted those three grades and sizes in making up their average, giving a weight of 50 per cent. to the 13/16 by 2¼ inch flooring, 35 per cent. to the 13/16 by 2¼ No. 1 and 15 per cent. to the 13/16 by 2¼ factory; these percentages being arrived at by determining the proportion in which these three grades of flooring are manufactured and sold by the members of the association. Is the making of such a weighted average a method generally recognized [fol. 1278] by statisticians?

A. Yes, an index number I imagine is essentially similar to getting at a resultant in physics, where you have different forces moving at times in different directions with different intensities. The only way we can get at a reasonably true movement of the product as a whole here or commodity prices as a whole in the Bureau of Labor Statistics index is by combining them, and in combining them the question comes right up of whether or not one desires to weight, and essentially the only sound basis is weighting if there is any reason under the sun for weighting, and here where you have the information, the weighting is thoroughly desirable, and I should say essential to get at the truth.

Q. It is rather common practice, is it not, to take three or more items representing different grades or classes of a commodity and so combining them to represent the commodity?

A. Oh, yes. For instance Prof. Copeland in his international comparisons of print cloth, combined half a dozen grades or more of cotton goods in American markets, the same in British, India and Chinese markets, and in the textile industry today I think that the Fairchild index of cotton goods based by combining a considerable number of them is considered sound, thoroughly sound.

Q. If you look, Dr. Hettinger, at Exhibit No. 7, which is a comparison of the price index of the product with the f. o. b. mill prices of its components, that is the three grades which I mentioned to you a few minutes ago, assuming that the figures from which this chart was prepared are accurate and have been accurately placed upon the chart, would you say that by looking at this chart, Exhibit 7, Mr. Keehn and Mr. Gordon were justified in combining these three grades [fol. 1279] and sizes of maple flooring into the components which they have termed the product?

A. Yes, if there were merely the white line I would feel it was justified, and where they have given in addition the actual prices of each of the component parts, I feel that it is doubly justified. One has all manner of comparisons possible there to get at the truest picture of the situation.

Q. And does that chart, Exhibit 7, show that the various component parts of the three grades have substantially the same movements as the component which is evidenced by the white line?

A. I should say that mathematically speaking the correlation would approach perfect positive correlation.

Q. Now this chart, Exhibit 7, which you are looking at and most of the other charts which appear as exhibits to the depositions of Mr.

Keehn and Mr. Gordon are charts upon a logarithmic scale, are they not?

A. Yes.

Q. What can you tell us about the use of a logarithmic scale where you desire to make comparisons of movements?

A. A logarithmic scale such as one finds on a ratio chart presents the truest figure of percentage changes, for the reason that any given distance on the vertical scale, regardless of where selected, means absolutely the same percentage change; so that a drop of an inch in the price of the product in 1920 would mean the same percentage of change as a drop of an inch anywhere else. And that would not be true on an arithmetic scale. An arithmetic scale will give one a [fol. 1280] good, honest cross section picture showing the relative magnitude at a moment of time of each curve presented on it. It does not give a picture of percentage changes from time to time. Consequently, I feel that in practically all cases of time comparisons where I was interested in the trend, whether one curve moved with another, whether you could trace cause and effect in the movements, I would prefer the logarithmic scale, and I think there would be substantial unanimity among the better class of statisticians there. If I were localized on a cross section at one moment of time I am inclined to think that there an arithmetic scale would be preferred. Now practically all the charts in here have to deal with time comparisons from 1912 on. We are interested in the reactions of demand and supply and price and their sequence and the intensity of the relative trends, and for that reason I am in thorough agreement with the particular selection chart by chart throughout as to scale, whether logarithmic or arithmetic.

Q. In a chart such as Exhibit 7 for instance you are not interested there in the quantity, the difference between the various lines there charted, but only in the shape of the lines, are you not?

A. I am interested in the trend, the time trend there. With the scale one could approximate very closely his cross section view with his slight mental readjustment, but for the trends, and that is what we are interested in, we want the logarithmic charts there.

Q. Now getting back to the chart which I first called to your attention, Exhibit 6, which is the comparison of the index of the prices and the product with the indices from the United States Bureau of Labor Statistics, all commodities, all building material and [fol. 1281] lumber prices, assuming the accuracy of the figures which have been charted upon that chart, Exhibit 6, and the accuracy with which they have been charted, what does that chart show to you as a statistician?

A. Do you at a glance or in some detail?

Q. Oh, yes, at a glance. I do not mean for you to follow it in detail.

A. I think that the striking thing that would be shown would be the strong cycle movement and the very pronounced factor of price inflation that occurred primarily beginning with the latter quarter of 1915, when we felt the effect of European demand upon our commodities.

I think, to go further, it would show substantial conformity in the movements of the curves with what I think one would expect, a very much lower price movement of the product during the period of time when, due to war conditions, there was definite curtailment in building and an extremely pronounced upward swing of the products price as soon as we came into a boom period with no restrictions on building and had the pent force of curtailed demand. That except for those two variations which can be explained by economic conditions the correlation would be very close.

Q. That is the correlation between the price of the product and the other prices which are referred to?

A. And the other prices referred to here.

Q. Referring next, Dr. Hettinger, to the chart which is marked as Gordon's Exhibit No. 9, you will note that that chart is a comparison of the value and volume of new building contracts awarded in the United States monthly from 1913 to 1923. I will call your attention first to the fact that the source of information from which the value of new building contracts awarded in the United States has been taken is F. W. Dodge & Company's figures. What can you say about the figures supplied by the F. W. Dodge Company as a source of information?

A. Without question they are standard figures for the industry. In the Federal Reserve Bank of Boston we habitually use them, and the New York Bank does and they would be the most desirable figures one could obtain.

Q. Now those values are expressed in figures of dollars and cents, are they not?

A. Yes, sir.

Q. In order to make a proper comparison of volume of new building contracts awarded would it be necessary to deflate those dollar value figures?

A. In order to make any comparison with the physical volume of building, the physical aspects of the building situation, it would be obviously necessary to find a method for deflating the dollar value, due to the fact that there has been such a change in price levels since 1913; and in your later exhibits where comparisons are with physical volume, such as the number of board feet of unfilled orders and so forth, the comparisons would lose much of their value if they were not deflated in order to make as nearly as possible 1920 or 1921 or 1922 building contracts awarded totals comparable with those of the earlier period.

Q. Now have you observed the method employed by Mr. Gordon and Mr. Keehn in connection with this chart. Exhibit 9, in deflating those dollar value figures?

A. Yes, I have observed the method and am familiar with the method, and I feel that it is thoroughly sound and the best available method. I think I could say that it would be generally recognized as such. That was the Federal Reserve Bank of New York's method of deflation.

Q. Yes, I think in one of the tables attached to Exhibit 9 it is stated that it is the index developed by the Federal Reserve Bank

of New York and also used by the Cleveland Trust Company and by the Association of General Contractors of America.

A. Well, there I would say that in statistical work in general the Federal Reserve Bank of New York would be one of three foremost authorities. The American Telephone & Telegraph Company, the Harvard Economic Service and the Federal Reserve Bank of New York would head the procession. Mr. Snyder and Mr. Burgess of that bank have given very careful consideration to this subject and the index represents the best of statistical practice. The Cleveland Trust Company work is under Col. Ayre, the vice-president, who is certainly one of the half dozen foremost statisticians of the United States.

Q. Then turning to the table which follows the one which you have just been considering, Exhibit No. 10, attached to the deposition of Mr. Gordon, which is relation of new orders booked, by the M. F. M. A. to the volume of new building contracts awarded in the United States, on this chart you will note that the white line represents new orders booked by the members of the Maple Flooring Manufacturers Association. You may recall that the testimony of Mr. Gordon shows that in order to have a constant figure, one which was not influenced by the changes in membership, they have used [fol. 1284] the figures of new orders booked by 15 members of the association, that being the number that it was found had been members of this or prior associations continuously, although the present membership of the association is 22. If you will turn to the small chart which follows Exhibit 10, that is Exhibit 11, you will note that for the purpose of justifying the use of the figures of new orders booked by 15 members comparisons have been made between those figures and the figures for the same new orders booked by 22 members. From an examination of this small chart, Exhibit 11, would you say as a statistician that Mr. Gordon and Mr. Keehn were justified in taking the figures from the 15 so-called constant members?

A. Yes, the correlation is approximately perfect there and personally I would much prefer to get the truer comparability that one could get between different periods of time by sticking to the same consistent group of members than trying to shift my membership right along. In fact were that latter practice resorted to it would make me want to dig into the figures with a great deal of care.

Q. In other words, you feel they were justified in doing what they did in that respect?

A. Oh, absolutely.

Q. You will note that Exhibit 10, the one you were just looking at, makes the comparison without making adjustments for seasonal variation. On the third chart in this hearing, Exhibit No. 12 which follows the one you were just looking at, you see the same figures charted as upon Exhibit No. 10 with adjustment made for seasonal variation. Do you feel that an adjustment should be made in a comparison of this character for seasonal variation?

A. Yes. We are interested primarily in the reactions of these [fol. 1285] curves to conditions of improving or declining business,

and in the building industry the seasonal factor is so strong that it would really obscure a great deal of the other movement unless measured and corrected for. Consequently I feel that the correction and allowance for seasonal variation is both sound and desirable.

Q. You have observed, have you not, the method employed by Mr. Gordon and Mr. Keehn in making this correction for seasonal variation. Do you agree with the method which they have employed and is it one generally accepted by statisticians?

A. Yes. There are several methods of correcting for seasonal variation that are thoroughly accepted and that give approximately similar results. I think that they have taken one of the simplest and most clearly understood, and the fact that they have checked the results so obtained against the results yielded by what is probably the most technical method known gives double assurance in the validity of their methods.

Q. Now looking at this last chart, Exhibit No. 12, what does that chart reveal to you as a statistician as to the relation of new orders booked by the members of the association with the volume of new building contracts awarded in the United States.

A. Intrinsically a close correlation.

Q. That is that the movements have been very similar?

A. Oh, yes. When you get close correlation it would be I suppose a technical way of saying that the movements were extremely similar. I use that terminology possibly more than I should.

Q. Now if you will turn to Exhibit No. 14, which is an index of the volume of building in the United States yearly from 1900 to [fol. 1286] 1922, on which chart has been shown a line of trend indicating the normal trend in building construction in the United States during the period from 1900 to 1922, you have read the deposition of Mr. Gordon describing the method in which this line of trend has been plotted. I ask you whether or not you agree with that method of arriving at a line of trend.

A. It is the thoroughly accepted basis. That is, there would be two possible bases of computing, a straight line of trend and compound interest line of trend, and with the data as it exists there is not even room for argument. The straight line of trend will fit the data and the compound interest would not. They have taken the proper method and I believe that the results are truthful results.

Q. Is the ascertainment and plating of a line of trend a method in quite common use by statisticians in order to arrive at comparisons or for other statistical purposes?

A. Yes, it is. The Harvard Economic Service use it as the starting point in their cycle analyses, and personally I have used it in industrial statistics and in my consulting work consistently for a considerable length of time.

Q. I note that in plating this line of trend the period from 1916 up to and into 1923 is represented by a dotted line, indicating that the line of trend is carried on from the point in 1916 into 1922 on the same line with the line of trend as followed up to that point. Is that the usual method of expressing on a chart a line of trend?

A. If I can answer that in my own words a little differently there,

[fol. 1287] I would say that the purpose of measuring the line of trend is to give one of the best basis, the most rational basis for estimating the future, and that we consistently project a line of trend such as this one here into the future until we have definite indications that the line of trend should be changed. Here you have an abnormal war period with a very definitely recognized curtailment in building. You have an abnormal post-war period with equally recognized building activity above normal. And this line of trend as projected would give one the truest and a most reasonable basis for gauging what normally is, measuring the amount of deferred building during this so-called war period and arriving at an approximate estimate of the amount of deferred building that we can normally expect during the next few years.

Q. Now in this chart—

A. Pardon me. My last statement there is not quite as I want it—and giving us our best estimate for estimating the excess above normal during the next few years that will be necessary to compensate for this deferred building during the so-called war period.

Q. In this Exhibit 14 I take it we are interested in determining fixed relations as distinguished from the other charts in which we were comparing movements so that in line with your testimony a little while ago this chart is properly drawn I take it upon an arithmetical scale rather than upon the logarithmic scale?

A. Yes. We are interested in measuring volume practically here. This deferred volume of building will presumably be made up some time; part of it has been made up upon this book, and with a straight line fit and this time series one would never think of putting it on logarithmic paper.

[fol. 1288] Q. Now if you will turn, Dr. Hettinger, to Exhibit 17, which is a comparison of the prices of the product with the prices of competing wood floorings. I first call your attention to the sources of information as to the prices of the competing products, oak flooring, Arkansas soft pine and so forth. Is it permissible to take such data from trade papers of recognized standing?

A. It is customary. Are the sources stated right here?

Q. Yes, all the information except as to the price of the product is taken from the trade paper known as "Lumber," which is one of the recognized trade papers in the lumber industry. It further appears from the testimony of Mr. Keehn that in making up the index for the purpose of comparison he has taken the arithmetic average of those grades and prices of each of the competing wood floorings which from the information available were the grades and sizes coming most directly into competition with the product of maple flooring. Would you say that that was sound from a statistical standpoint?

A. I am not sure that I understand that question. Let me just read these headings.

Q. Yes, surely.

A. Yes, I should say that that was sound.

Q. In this case, Mr. Keehn testified that there was no information available as to the proportions in which oak flooring for instance,

the various grades of oak flooring which have been used in making up his index of oak flooring, were sold. Under such circumstances it is permissible to use an arithmetic average, is it not?

A. Oh, yes. Weighting is a complicated thing. If one has all the information in front of him one can frequently get a truer picture through weighting. In the absence of all that information [fol. 1289] the procedure followed of taking an arithmetic average of these given grades would I think be sound, and my own opinion is that in all probability the trends would be substantially the same, and I question whether there would be any point on the curve that would be a quarter of an inch different from what it is. That is just a guess, but I think it is true.

Q. It appears furthermore from Mr. Keehn's testimony that in a few instances it was necessary to use prices in a different market than the market generally used in making the index. And that is expressed, as you will note, upon the chart, Exhibit 17, by overlapping lines in some instances. Would you say from the examination of this chart that such substitution of prices made any difference in the results obtained?

A. I would say that the principle of splicing series is thoroughly sound. The Bureau of Labor Statistics resorts to it. The Dow-Jones average of industrial stock, the New York Times averages—I think it is sound here, and the fact that they have given the overlapping quotations for a given period of time indicates clearly that trends and results as a whole are not materially altered.

Q. Now in the following table, Exhibit No. 18, the comparison is made of the indices of the prices of the commodity or of the product maple flooring, and the other competing wood flooring, oak, Arkansas pine and Southern yellow pine and Douglas fir. Would you say as a statistician that these two charts, Exhibits 17 and 18, looking at them together, show substantially the same results, the first chart, 17, being the actual prices and Exhibit 18 being the indices.

A. Yes, either of them are thoroughly fair comparisons and the results are similar. One is simply expressing the actual difference [fol. 1290] and the other expressing them in percentage form.

Q. And looking at Exhibit 18, what does that chart express to you as a statistician?

A. It expresses to me the very intense cycle movement during the period following the war and the substantial conformity of the price of the product and the trends of the product as contrasted with the oak, Arkansas soft pine, Southern yellow pine and Douglas fir, which indicates that the product lags slightly behind the others and the movement both on upgrade and downgrade is consistent there; that the degree of correlation or correspondence of the whole group is extremely high.

Q. If you will turn to Exhibit 19, which is headed comparison of indices of prices of the product and Michigan f. o. b. mill prices of raw material, it appears from this exhibit that the index of the hard maple lumber prices has been made up by taking an arithmetical average—

A. You mean the rough maple lumber?

Q. Yes, the rough maple lumber—by taking an arithmetical average of the prices of three grades of hard maple lumber, those being the three grades commonly used for the manufacture of maple flooring; and that the data from which these prices were taken are from 1913 to 1918 the War Industries Board price Bulletin No. 3 and from 1919 to 1923 the last week in the month's issues of the trade journal "Lumber" except as to a few issues where the information was not available, where it was then taken from another trade journal, the American Lumberman. Would you say that in the preparation of such an index, assuming the facts to be as I have stated them in the question that is justifiable from a statistical standpoint?

[fol. 1291] A. Thoroughly so. That is as to the arithmetic average of the three grades of lumber used I would say that the arithmetic average would be preferable to using any one of the three alone. If one had been able to get what one could not be able to get, a definite basis for weighting those three, weighting might have been considered, though personally I question whether it would have changed the line itself or its trend to even a slight extent. The War Industries Board bulletins would be thoroughly authentic. Wesley C. Mitchell, heading that work did work of the highest standing during this period, and the supplementing of this data by the trade journal sources after the War Industries Board ceased to function would be thoroughly justifiable.

Q. Now looking at this chart, Exhibit 19, what does that indicate to you as a statistician?

A. Well, the very close correlation of the curve, the extreme upward movement of prices, the pronounced nature of cyclical movements would be the three things. The—well, that really covers it.

Q. During 1917 and 1918 and up until about the middle of 1919 you will note the price of the raw material moved on a higher level than the price of the product. Is that explainable to you?

A. Yes, it is; Normally the movement of raw materials covers a wider amplitude of swing or fluctuation than that of the finished materials drawn from it and I should assume that the highly specialized character of the product there, the fact that it was a finished goods as contrasted with raw material could explain that. The thing that I am rather surprised at at the moment here is the fact that on [fol. 1292] the downgrade the product seemed to lead the raw material.

Q. Just what do you mean by that statement, Dr. Hettinger, during the latter part of 1920 and 1921?

A. Yes, during 1920, the fall of the finished goods occurs before the raw material and the amplitude of the swing is moderately greater.

Q. Ordinarily you would not expect that—

A. No, I would not have expected that.

Q. —that the price of the specialized product would have dropped more rapidly than the raw material?

A. No, I would have expected just the reverse ordinarily, and I am

inclined to think that I would have expected—well, I can say that much pretty definitely and there is no use in guessing beyond.

Q. It appears in 1917 to 1918 that there was a restriction upon building placed by the United States Government as a war measure and that it appears further from the testimony of Mr. Keehn that rough maple lumber had many other uses than its use for the manufacture of maple flooring. Would that afford a possible explanation of the relative movement of the two prices during that period, 1917 and 1918?

A. Yes, that would be a very probable explanation of those differences. That is, if your rough maple lumber had alternative uses that were not open to the product with limitations on building, that I imagine is largely the explanation of the difference in price movement.

Q. And in 1920 on the basis of the raw material costs you would normally have expected the price of the product to have remained at a higher level for a longer period of time?

A. I would have expected in 1920 that the price of the raw material [fol. 1293] would have exceeded that of the finished product and that the price of the finished product would have lagged on the drop behind the raw material. I think that would have been the logical expectation.

Q. But in this instance it seems to have dropped sooner and more rapidly?

A. Yes.

Q. Looking at the next chart, Exhibit 21, which is a comparison of index prices of the product and an index of the average manufacturing and marketing costs of the members in the association, what does an examination of that chart, Exhibit 21, show you as an statistician?

A. That it both felt the changes in price level and in cycle movement; that during the period 1917, 1918 and the early part of 1919 when business was very uncertain, the first quarter of 1919, the price of the product was substantially below the average manufacturing and marketing costs; I imagine because the volume of business was not essentially large and the overhead burdens pretty heavy there. That that condition naturally changes in the latter part of 1919 and 1920, when the product feels the full brunt of the intensive demand for building materials, and you have a period roughly say of seventeen months when prices of the product were above costs. That during the period of depression in 1921 prices of the product declined rapidly costs lagged behind in the decline, and for that year as a whole the two curves moved in the same rough direction and at the same levels. The quantity of deferred building on hand still and the fact that the building industry did not feel as intensive movement I should assume would have been the explanation for the moderately earlier recovery of the product prices. And [fol. 1294] during 1922 and 1923 with large volumes of business prices of the product increased above costs levels. It is just what one normally would have expected with the trends of business making

allowance for the large amount of deferred building during the war period that has to be satisfied in the latter period.

Q. You will note from this chart that the movement of average manufacturing and marketing costs as indicated by the red line shows quite a definite lag in a movement of those costs over the price of the product. Is such a lag in manufacturing costs other than raw material one which you would naturally expect?

A. I assume you are speaking primarily of this 1920 situation?

Q. Yes.

A. Yes, it is absolutely what one would expect there. You cannot control your costs and reduce them as fast as you have got to reduce your prices there. Labor was getting increased rates in most industry throughout the spring and summer of 1920, even though prices were beginning to crumble. Overhead costs, that is of office personnel and that type of thing, can be reduced only with extreme difficulty, and I think that that would be a perfectly normal movement.

Q. The same is true on the upswing, is it not, that labor costs are not adjusted as rapidly as the price of the product?

A. Yes, it is a truism that labor prices lag behind business in general. They are slower to go up and slower to come down.

Q. If you will look now at the next large chart which is Exhibit No. 23, showing the relation of the prices of the product to the demand and supply of the product, you will recall from the testimony of Mr. Keehn that Mr. Keehn and Mr. Gordon have taken unfilled orders of the members of the association as representing demand and [fol. 1295] stocks on hand as representing supply for the purposes of making this comparison. Do you consider that sound from a statistical standpoint?

A. I do.

Q. This comparison as shown upon Exhibit 23 has been corrected for seasonal variation. Do you consider such correction as desirable in order to get a true picture; the corrected index being shown on chart No. 24, which follows?

A. Yes, it would be necessary to correct it for seasonal variation to get any clear picture of trend, the seasonal movement being so thoroughly marked.

Q. The same method of correction was used in this instance as in the other instance which I asked you about. Now the chart, Exhibit 24, in addition to the correction for seasonal variations has also been corrected as far as the price is concerned for what is stated upon the chart to be the decrease in the value of the dollar or the general price level change. Are you familiar with the method employed in making such so-called deflation?

A. You mean the specific method employed here?

Q. Yes, the method employed by Mr. Keehn and Mr. Gordon as set forth in their depositions.

A. I am.

Q. Is the method which they have employed an allowable method for such correction?

A. Yes, it is. It is an extremely difficult thing to do and I think

that one can say this, that in the first of these two exhibits before the correction is made—

Q. That is Exhibit 23 you are now referring to, for the purpose of the record?

[fol. 1296] A. Yes, the strong upward trend of prices which occurred through the war period would make it rather difficult to compare the relation of the prices of the product to the factors of supply and demand. We have to make a mental adjustment throughout for that change in the price level. In the second of these charts, Exhibit 24, that correction for change in price level brings all three curves within more comparable range. I do not think that any of us would claim that this correction or any other correction for prices would be 100 per cent. correct, but I think that we could honestly state that this as well as several other methods would be substantially correct, and in so far as the month to month trends are concerned presents a truer picture than the earlier chart. That the conclusions that I came to from Exhibit 24 would be similar to those that I would come to in so far as the price of the product is concerned on Exhibit 23 if I made my mental adjustment for changes in price level.

Q. Now looking at Exhibit No. 24, what does that chart show you as a statistician?

A. The fact that all three of these curves reflect sensitively changes in the trend of business; that you have a very high degree of negative correlation between prices and stocks on hand; and that the price movement tends to lag behind the movement either of unfilled orders or stocks on hand, which would indicate that price was primarily the result of those two factors.

Q. Is that lag to which you refer one which is usually found in such comparisons?

A. Yes. For instance if you were to take the situation in probably our biggest basic industry, the steel industry, in 1920 production got as low as 864,000 tons, I believe, about June. I do not believe [fol. 1297] that price reached its lowest level until at least six or eight months, and I am inclined to think at least eight months, afterwards. You would expect a pronounced lag in price as contrasted with the other two curves.

Q. And that same result I believe you have said could be determined from an examination of Exhibit 23?

A. Oh, yes.

Q. Although not—

A. Personally, I think I will get a clearer picture from Exhibit 24, realizing that the white line is approximately correct, but that there is naturally a possible slight element of error depending upon men's judgment. It is a thing that we cannot be sure of to the last percentage, but I feel that I would get a clearer picture from Exhibit 24 than 23, though not essentially a changed picture. It is simply a clearer photograph of the same thing.

Q. After discussing these two charts Mr. Keehn in his deposition states that it is apparent that with practically every increase in the excess of demand over supply came with a natural lag an increase in the price and with every increase of the increase of supply over de-

mand came with a natural lag a decrease in the price of the product. Assuming the accuracy of these charts would you say that that conclusion as expressed by Mr. Keehn is correct?

A. I would.

Q. Looking now at chart No. 27, which is a comparison of the production of the product maple flooring to the demand and the supply of that product, here again the chart has been corrected for seasonal variation in the same method that has been employed with the other charts concerning which I have asked you. Is such a correction [fol. 1298] for seasonal variation desirable in such a comparison?

A. Yes.

Q. Now looking at this chart, Exhibit 27, the corrected chart, what in general does that chart show you as a statistician?

A. I think primarily that unfilled orders declined at a somewhat earlier date than production, indicating that production was continued in the face of bad business as long as the manufacture felt that he reasonable could keep running, and that that slowness with which production was curtailed led to a building up of stocks in the early stages of any period of depression; that on an upward movement somewhat the reverse would naturally have been expected, and I think the evidence indicates it; and throughout the very sensitive nature of all three curves when contrasted with changing trends of business.

Q. And the chart indicates in general, does it not, that the production of maple flooring has fluctuated in accordance with the factors of supply and demand as there represented upon this chart by unfilled orders and stocks on hand?

A. Oh, yes, fluctuated with it; in fact, was guided by it. That would be indicated by that lag to which I have referred.

Q. Production being in general more inelastic than demand?

A. Very much so.

Q. I will now call your attention to Exhibit 28 which is a bar chart showing a comparison of f. o. b. mill prices realized by reporting members of the manufacturers association during certain months in the year 1920 and in the year 1922. Assuming the accuracy of the figures which are represented upon this chart what does this chart show in general?

A. It shows of course the substantial decline that has occurred in [fol. 1299] prices between the two periods and a rather pronounced variation in price by—each of these members refers to a specific mill I take it?

Q. Yes.

A. By the different mills. For instance in the clear the range would run from about 153 to 220. That would mean that the highest price was somewhat more than 40 per cent above the lowest in that group. That in the No. 1 they range say from 150 to probably 195, which would indicate a 30 per cent range. That probably in the factory between 115 and a shade above 145 would indicate a range of over 25 per cent. A rather marked dispersion, in other words, of prices from their arithmetic average and the same type of thing is true in March, 1922. There on a percentage basis probably more pronounced in case of factory than clear. Just a little bit of reversal as to

which particular group had the widest dispersion of prices from what you could term the average of the group.

Q. This type chart is adequate, is it not, for the presentation of such a comparison as this where you are making comparisons between fixed amounts?

A. Personally I should regard it as the most desirable type of chart for this purpose.

Q. Will you turn back to chart 24 and referring to the lines drawn on the chart representing the movements in the year 1920 and particularly to the movement of the line representing the demand as compared to the movement of the line representing prices during that period, from 1920 in 1921, can you explain the correlation of [fol. 1300] those two lines?

A. What I should assume there is that the rate of manufacturing activity was increasing through that period; that with rising prices there was every incentive for it, and I think that the previous charts will indicate that that is so. That stocks were being depleted very fast. That with the increase in manufacturing demand by probably January, 1920, manufacturers were able to meet and hold their own with incoming orders. That incoming orders began to fall about that time. That costs of production were still increasing very fast. There was a railroad increase in rates early in 1920 and I imagine more awards of higher pay during the first six months of 1920 than in almost any period during this unsettled ten years we are considering. That the trend of commodity prices in general was still rapidly upward. The old Bureau of Labor Statistics index numbers, with 100 as base, in 1913 recorded the highest prices of the movement, 272, in May, 1920. A later index on a different base revised things slightly and I think showed higher prices at even a later date. Dun's review showed the highest price of the movement in May, 1920. As nearly as I can gauge from this chart the commodity reached its high price in April, which would have been one month earlier than Dun's Review and one or more months earlier than the Bureau of Labor Statistics review. It started its decline at an earlier date than commodity prices as a whole. This movement the first three or four months was, I believe the figures would show, thoroughly typical of commodity prices as a whole. For instance, raw cotton prices reached their peak of 43¾ cents a pound for spot cotton as early as August and other commodities trailing on until some of them reached their [fol. 1301] peaks early in 1921. The fall of commodity prices in general was most drastic during the last four months, say, approximately, of 1920 and I think that the commodity here indicates that. If you will recall the earlier chart where I commented that I was surprised that the commodity had fallen at an earlier date than—

Q. Exhibit No. 19?

A. Yes, you will remember that I was surprised that the product price had fallen at an earlier date than the basic raw material from which it was drawn. That was based not only on my generalizations concerning raw materials but that I had expected from the nature of this particular series to find some lag after commodity prices in the

drop rather than what appears to be even an anticipation of them.

Q. In other words, it would appear that the prices of the product of maple flooring instead of being maintained beyond the point of the general down swing in prices acted very sensitively to the change in conditions and declined at a rather earlier date?

A. Yes. In fairness I think I ought to say that Bradstreet's index, as I recall it, reached a peak in February with \$20.27 whereas the pre-war price had been \$8 or \$9. Dun's Review in May, the early Bureau of Labor Statistics review of index number in May and the revised one at a somewhat later date. So that I think it would be a fair generalization that the price of the product fell at a moderately earlier date and that the percentage decline in the product during the last four months of 1920 was certainly more than that of commodity prices in general, and I think substantially more. In other words, the product declined from say about 280 down to 90 during a period when commodity prices as a whole declined from about [fol. 1302] 272 down to 140. That would mean that the deflation in the product was probably one third again as much as in most commodities and occurred at a slightly earlier date.

Q. Now taking the statistics which have been compiled in this case by Mr. Keehn and Mr. Gordon, taking them as a whole, what would you say as a statistician as to the adequacy of the statistics and the charts for the purpose of presenting a study of the relationship of the price of the commodity, maple flooring, to the other factors with which they are compared?

A. I think that the material chosen shows uniform good judgment; that the methods are essentially sound and able and that on the whole it is a remarkably fine piece of work, an unusually fine piece of work. I think that I could fairly say throughout that in choice of scale, in methods of weighing, in the decision as to whether or not to correct for seasonal variation and the methods adopted there in the measurements of long time trend, in the choice of methods for deflating building costs and such things, that in each case where material that could have been used existed they selected what I should term the best methods, and where they have had to pioneer for themselves essentially as they did in the one case in Exhibit 24, that the result they get presents a clearer picture than would have been presented without it. That the conclusions one would gain from Exhibits 23 and 24 are essentially the same, and that by including both uncorrected and corrected data they permit the user of the exhibits to form his own conclusions in a way that would not have been possible without it. Does that cover your ground? I think it is a thoroughly able piece of work from beginning to end. [fol. 1303] Q. Taking the data as portrayed in these tables and upon these charts as accurate and the portrayal thereof as accurate, do you find anything in the data or the charts which is indicative of an arbitrary fixation of the price of this product, maple flooring?

A. Not a thing. That is the fact that throughout price seems to be the resultant of supply and demand; that it rather follows the supply and demand; the fact that during that period at the beginning of the war, a period of depression, the prices of the commodity

showed the effects of that depression and were lower than price levels as a whole; the fact that the commodity received relatively little advantage during the period of arbitrary increasing prices in 1917-18 when there was the curtailment in business; the fact that the decline in the price of the product occurred at as early if not earlier date than that of most commodities; that it lagged behind commodities on the upward movement and had a more intense downward movement, would lead me to believe on the basis of all that I have seen here, that is the exhibits that I have really studied—would lead me to believe that this market exhibited rather more sensitively than one would have expected in as broad a market the full play of the factors of supply and demand.

Q. There is a discussion you may recall in the earlier part of Mr. Gordon's deposition as to the methods of control of the prices of a given commodity in which he discusses the different methods by which the price may be controlled, the different ways it may be controlled, as for instance at an unreasonably high level continuously, at an unreasonably low level continuously, at alternate high and low levels and a discussion of the condition of this industry with respect to the supply of the raw material; the other manufacturers of the product not within the association, the number of manufacturers of rough maple lumber and the other factors which might [fol. 1304] affect and control of the supply of the raw material. Do you recall that discussion, Dr. Hettinger?

A. Yes.

Q. I will ask you whether or not you would agree with that portion of Mr. Gordon's deposition in which he discusses that subject?

A. Yes, I would. He has had a really hard time at times in getting material from the Census to serve as a comparison with the fuller material available from the association, and I feel there that in his tabular presentation he has rather erred on the side of conservatism than anything else. That is, he has understated his case, if you want to consider it that way, rather than overstated it.

Q. And on the basis of the statistics and facts presented by him would you reach the same conclusion which Mr. Gordon reached, that the Maple Flooring Manufacturers Association did not control the potential supply of its raw material?

A. Yes, I should assume that. That is, I am not a lumberman and that is out of my line. I am familiar with statistics and statistical methods and economics and on the basis of what there is here and my own judgment on the situation I would concur in the conclusions he expressed. The expert end of my testimony of course would have to be on the statistical methods and possibly the economics attached to it rather than the internal phases of the lumbering industry. I am out of my depth there naturally.

Mr. Johnston: I think that is all.

Mr. Benton: I have nothing to say at all.

[fol. 1305] DEPOSITION OF HOMER B. VANDERBLUE, TAKEN PURSUANT TO STIPULATION, AT WINTHROP HALL, CAMBRIDGE, MASSACHUSETTS, ON NOVEMBER 22, 1923.

HOMER B. VANDERBLUE, being duly sworn, testified as follows:

Direct examination.

By Mr. Johnston:

Q. What is your full name?

A. Homer B. Vanderblue.

Q. Where do you reside, Professor Vanderblue?

A. Cambridge, Mass.

Q. What is your occupation?

A. I am Professor of Business Economics in the Graduate School of Business Administration of Harvard University and Economist with the Harvard University Committee on Economic Research.

Q. What subjects do you teach in the Graduate School of Business Administration?

A. I teach the course which goes under the general name of business economics, which has to do primarily with the relationships of the movements of the business cycle to business conditions and business policies.

Q. Now what is the Harvard Committee on Economic Research?

A. The Harvard Committee on Economic Research is engaged in the publication of the Harvard Economic Service and of the Review of Economic Statistics. The group of economists who collaborate most actively in the preparation of this work includes Charles J. Bullock, who is the chairman, Warren M. Parson, who is the editor of the Review of Economic Statistics, and myself, with professors Allyn Young, John H. Williams and J. S. Davis of Stanford [fol. 1306] University, as contributing editors; including those amongst the contributing editors.

Q. How long has that Committee been in existence?

A. That committee began the publication of the Harvard Economic Service or its predecessor publication of supplements to the Review of Economic Statistics, in the beginning of 1919, or has since published; the preliminary investigations anticipated the publication, necessarily.

Q. And what is the general scope of the publications and of the service which the Committee on Economic Research puts forth?

A. The Committee on Economic Research is engaged in the study of the economic phenomenon which economists know as the business cycle and makes interpretations of certain business conditions and a forecast of future business conditions based upon that economic analysis. In that work it is my function each month to make the appraisal of the current business situation as contrasted with or differentiated from the appraisal of conditions in the money market and in speculative markets, although necessarily there is a taking into

account of conditions in these markets and an appraisal of general business conditions.

Q. And to whom does this service go in general?

A. This service goes to business men, to bankers, both investment bankers and commercial bankers, to some individuals who are interested primarily as investors; but our service is sold essentially as a business service and is sold to business men. We have in the neighborhood of 2,325 individual business firms or business men subscribing. This is in addition to subscriptions or some duplicate subscriptions which go in some instances to firms that subscribe for more than one copy in order that copies may be available for their executives.

Q. How long have you been connected with the Harvard Graduate School of Business Administration?

A. I became Professor of Business Economics in September, 1922.

Q. Prior to that time were you engaged in educational work?

A. Prior to that time I was successively Assistant Professor, Associate Professor and Professor of Transportation in Northwestern University, where I taught courses in Transportation and general economic principles and in economic history.

Q. That is Northwestern University at Evanston and Chicago, Illinois?

A. Evanston and Chicago, Ill.

Q. And how long were you connected in the capacities that you have mentioned with Northwestern University?

A. I went to Northwestern University in the fall of 1915 and was a member of the faculty of that institution until my coming to Harvard. During certain periods of that time I was on leave of absence; from May, 1917, to late in December of 1918 I was an officer in the United States Army; and from June, 1920, until September 1921, I was engaged in making a study of business conditions, both in relationship to resources and to the business cycle of general business conditions for the Denver Civic and Commercial Association of Denver, Colorado. At no time did I resign from the university; I was on leave of absence in both instances.

Q. Where did you receive your preliminary education *had* training?

A. At Northwestern University, where I graduated and also took a Master's degree, and at Harvard University, from which I received the degree of Doctor of Philosophy in 1915, having done my work in economics.

Q. Have you published in addition to the articles which I take it you have written frequently on economic subjects any books or treatises upon any general economic subjects or any special economic subjects?

A. I have written two books on the subject; that is, I myself have written two books on the subject of railroad valuation, one of them called Railroad Valuation and the other Railroad Valuation by the Interstate Commerce Commission, which were essentially an analysis of the railroad valuation problem from the point of view of economic.

theory, to be contrasted perhaps with the point of view of the engineer. In the early part of 1923 I published in collaboration with [fol. 1308] Kenneth F. Burgess a more general volume on the subject of railroads, entitled *Railroads: Rates, Service, Management*. In addition to these books I have from time to time contributed to such periodicals as the *Journal of Political Economy*, *American Economic Review*, *Quarterly Journal of Economics*, *Railway Age, System*.

Q. Now I take it in addition to your academic work which you have done as a professor in these two universities and in addition to your active work with the Harvard Committee on Economic Research you have had considerable practical experience in the investigation of actual business conditions in given businesses.

A. My experience has been very much less with individual business than with business conditions in general. That is in the work we are now engaged, it is only occasionally that we have the opportunity or for that matter the time to investigate in detail the figures furnished us by individual businesses. Last year I made the necessary preliminary studies and under my direction detailed studies were made and published of the business cycle in relationship with the paper industry and with the leather and hide industries, and we have made individual studies of the relationship of the statistics of an individual enterprise to the business cycle. We have collaborated with individual firms in showing them how to do the work which we are doing.

Q. That is what I had in mind more particularly.

A. Yes. It happens that we have a limited number of individuals who are competent to do statistical work and for whose accuracy we are willing to vouch, and we have to keep down the amount of that work which we do.

Q. But all of your work for a good many years has brought you into very close touch with actual business conditions throughout the United States?

A. I have been studying business conditions for fifteen years.

Q. Are you acquainted with Mr. Edward B. Gordon and Mr. Grant Keehn, both of whom I believe have been connected with the Harvard Graduate School of Business Administration?

[fol. 1309] A. Mr. Keehn and Mr. Gordon were both members of my course given in the Graduate School of Business Administration last year, and did work of very high calibre.

Q. Have you, Prof. Vanderblue, read the depositions which have been given by Mr. Edward B. Gordon and Mr. Grant Keehn in this case of the United States of America vs. Maple Flooring Manufacturers Association and others, and have you likewise examined the exhibits which are attached to and form a part of those depositions?

A. I have.

Q. Now Prof. Vanderblue, turning to the deposition which was given by Mr. Gordon, one of the first subjects discussed by him in his deposition at some length is the methods by which those engaged in a certain industry may control the price of the commodity

which they are manufacturing and selling. As for instance, by controlling such price at an unreasonably high level, at an unreasonably low level, at a reasonable level and for periods of time at an alternately high and low level. Do you recall that discussion in the deposition?

A. Yes, I do.

Q. Addressing ourselves now to the division which he makes of such possible control of prices, do you agree in general with that discussion?

A. I should say that in general I would agree with that discussion; that he takes the alternate possibilities and discusses those so that at the conclusion he has covered the essential possibilities.

Q. Of price control?

A. Of price control, yes.

Q. Now assuming that it is established as a fact with reference to the manufacturers of maple, birch and and beech flooring who are members of the Maple Flooring Manufacturers Association that such members are about 22 in number; that there are approximately a hundred other individuals, firms or corporations who are engaged in the manufacture of the same products, maple, birch and beech flooring; that the members of this association consume annually [fol. 1310] approximately a little less than 20 per cent. of the rough maple lumber available to be manufactured into maple flooring; that they control something less than 2 per cent. of the maple timber which may be processed into rough maple lumber and into maple flooring; that it is further established that the manufacturers of competing wood flooring, such as oak and white pine may without additional expense process through their established factories or mills maple flooring should the price be attractive rather than their usual product of oak, white pine or whatever it may be; and that the cost of entering into the manufacture of maple flooring is relatively small, requiring an investment of approximately \$30,000 for the installation of such machinery as would enable a manufacturer of rough maple lumber to process that lumber into maple flooring; and that there are on the average approximately 4,767 manufacturers of rough maple lumber in the United States; what would you say as to the possibility of the members of this association maintaining the price of their product, maple flooring, at an unreasonably high level for any continuous period of time?

A. I could say that it would be impossible for, in making these assumptions, the competition either of new producers or of the substitute materials would break the market.

Q. And just why in your opinion is it impossible for such group of manufacturers to control the price of their commodity at an unreasonably high level for any appreciable period of time?

A. Assuming that there is an available supply of raw material and that there is equipment which can be turned into this field, the result of a sustained high level and extreme profit in one particular line would be to draw capital, labor and managerial ability from other field into this, so that any substantially higher market of the

particular commodity would be broken by the alternate supply that would be available and the use of substitute commodities would, in view of this high price, curtail the volume of this that would be used. There is no more persistent principle operating in economic affairs than this principle of substitution. That is, given a [fol. 1311] market that can choose, it is a continuous weighing of alternatives. Therefore accepting the assumptions which have been given by Mr. Johnston, it is my opinion that the result of maintaining prices on an unreasonably high level over a sustained period of time would be out of the question.

Q. And you base that, I take it, upon your familiarity with the industry of the country as a whole?

A. I am basing that upon the normal relationship that we have developed in other industries, where we get not only the demand and supply of a particular commodity but also the demand and supply of alternate commodities.

Q. What would be necessary for a group of manufacturers of a given commodity to enable them to control the prices of their commodity at an unreasonably high level?

A. They would have to have sustained control of the supply; that is the essence—you are really raising the essential question of a monopoly—they would have to have a virtual control of the supply, because it is by a virtual control of the supply that any monopoly is able to control; and of course that is in those cases, even in the case of an extreme monopoly, which the assumption you have made in the question leaves out of consideration, but even assuming there was one, the attempt of the manufacturers would have to be tempered by the recognition of possible substitute materials.

Q. And in the case of the manufacture of maple flooring which, it appears, is the mere processing of rough maple lumber into another form, not by means of any patented processes but by means of machinery which is available to all who care to purchase and install and operate the machinery, that would mean the control virtually of the raw material, would it not? I mean by that the control of the supply.

A. Yes, that means the control of the raw material, although it is conceivable that control of all of the equipment might do it. If you had control of all the supply and of the companies that made the equipment it is conceivable that a monopoly could be effected in that way.

Q. Well, I am assuming that the equipment is available to every [fol. 1312] body and at a small capital investment.

A. Assuming that there are equipment companies who are furnishing the equipment in an open market, I see no reason for believing that there could be control other than by a control of the raw material and supply over a period of years.

Q. Now I take it from your answers to the questions already propounded that you would give the same answer if I was referring to the possibility of the same group of manufacturers controlling

the price of the commodity for a sustained period at an unreasonably low level?

A. It is inconceivable, the way business is organized and the way society is organized, that any group of business men or any business man would stay in business and maintain his prices at a level which, over a period of years, did not give him at least a rate of return which was commensurate with what could be earned in other industries. It is not conceivable that any group of individuals or any business man is going to stay in business for his health.

Q. Now taking the possibility of the control of the prices of maple, birch and beech flooring by the members of the Maple Flooring Manufacturers Association at alternately high and low levels; or, putting it in another way, at an unreasonably high level for a period of time and then at an unreasonably low level, or the converse, what sort of evidence would you as a practical economist want in order to determine whether or not the manufacturers of maple, birch and beech flooring who are members of the manufacturers association were or had in the past been maintaining their prices at such an alternate high and alternate low level for periods of time; by alternate high I mean at an unreasonably high level and alternate low, at an unreasonably low level, which might force other producers out of competition?

A. I should want to have the best information available concerning conditions of supply and demand in the market. That is, in the case of demand, the volume of unfilled orders on hand and the current rate of new orders; and in the case of supply, the date of production plus the accumulated supply of stocks on hand. That is, you have two sides to the equation, both supply and demand; and [fol. 1313] I should like to see what the conditions of supply and the conditions of demand were at the two times. Of course that question assumes, like the first one, a control of the supply?

Q. Yes.

A. And if we assume that, we look for the conditions of supply and demand in the market.

Q. We were discussing a situation which might conceivably exist where without a control of the supply the manufacturers of this product grouped in this association were able to hold the price at the high level for a short period of time and then drop the price to a low level for a short period of time and then raise the price again to a high level.

A. That would assume a control over demand. That is, assuming one set of things, they might control the supply, but that would assume a control over demand, and I would want to know what the demand condition was.

Q. Now would one of the elements to be taken into account in such a study, Prof. Vanderblue, include a comparison of the prices of this product of maple flooring with the prices during the same period of time for other commodities in general?

A. That would be very important for the reason that it would be necessary to consider how the demand or supply for the commodity

would be affected by the phase of the business cycle you were considering.

Q. Would it also be important to consider as a bearing upon the solution of that problem a comparison of the prices charged by members forming this association for maple flooring and the prices by other manufacturers for directly competing wood floorings, such as oak flooring and pine?

A. Of course that becomes highly significant, because that brings into play the principle of substitution of which I spoke a moment ago. That is, given a fixed demand for floor coverings or floors, you then have alternate supplies which you can draw upon and there [fol. 1314] is an interplay of the phase of the importance of one as against the other.

Q. Would it also be important to consider in addition to the element which you state of the supply of the product and the demand for the product from time to time, also the element of production by the manufacturers of this product as compared with the supply and demand for the product?

A. Of course there are some commodities which are produced where you can increase the quantity that comes on the market at a lower price, the cost becomes less per unit. If you get a commodity where you have to go deeper into the forest or further down into a mine, it costs more and more to get the additional units; and so in the case of a commodity which has a decreasing supply of raw material, where you are using up the inheritance of the community, you will find there a trend upward as well as a cyclical response.

Q. And it would also be important to consider the costs of production such as the costs of the raw material and other producing costs as compared with the prices of the product, would it not?

A. All commodities will not move with the same amplitude in the swing of the cycle. That is, you will find some commodities which will move with a very wide swing and some with a less wide swing.

Q. But there is generally, is there not, a relationship between the cost of course of the raw material and the other producing costs and the price charged for the commodity?

A. In a highly competitive market where you get a group of producers bidding for the same supply of raw material and selling in a common market you will find or you would expect to find that the movement would be in close coincidence, because you have the same group of forces operative both in the producing market and selling market. That assumes that the men on both sides have knowledge of what the market conditions are and that they are intelligent and not in business for their health.

[fol. 1315] Q. Now referring to the discussion of this general subject which is included first in the deposition of Mr. Gordon, you will recall that he has made a study of the movement of the prices of what he has termed the product, which is maple flooring, with the movement of the prices of all commodities, of all building materials and lumber prices during a monthly period from 1913 up to and

including the early part of 1923, which is expressed on Gordon's Exhibit No. 6, which I believe you have before you. This chart purports to set forth the figures which are taken from indices of these several prices, the indices being those used by the United States Bureau of Labor Statistics. I will ask you first whether the use of such indices in studies of price movements is well recognized by economists?

A. Economists in general use indices of this character in making of price comparisons, as it is a method, and the only feasible method, for making comparisons of prices of different commodities. It brings them to a common basis.

Q. Is the compilation of figures put out by the Bureau of Labor Statistics, as for instance their figures on all commodity prices, all building material prices and all lumber prices a source quite generally used by economists?

A. It is not only generally used by economists, it is one on which we on the Committee of Economic Research place the greatest dependence. They are among the best of index numbers which are published at this time.

Q. Where you are seeking for purposes of comparison to obtain a price index of a group of commodities such as in the instant case, different grades of maple flooring, is it a method in common use by economists to combine those several commodities into one group to be expressed in one price index figure?

A. It is. For example, in those two investigations which I supervised last year, the one made into the paper industry by the Committee of Economic Research and into the leather industry and hide industry, we used in our index for hides the average for five series [fol. 1316] and for calfskin three series, for goat skins three series, for oak sole leather four series, for union sole leather three series, side upper four series, calf upper four series and kid upper three series and then we used all these series in making our combined index, both for hides and skins and for leather. Likewise for paper, we used a number of different series. That method makes it possible in any peculiar abnormal thing which happened in one month or two months to any one grade or three or four grades—it permits it to be ironed out in the average in the process.

Q. And presents a fair comparison?

A. And presents a fair comparison of the situation as a whole.

Q. And it is permissible I presume to weight that average by giving due weight to the volume of the different grades—

A. That is sometimes done. It is usually very difficult to do because it is not often that one has the opportunity to get the materials to know what the weights are on these various grades.

Q. But if you have accurate information as to the volume which the different grades or groups bear in the given industry or given commodity, then it is permissible to weight those accordingly in making up an average?

A. It is permissible to do it and in many instances it is desirable to do it, but on the whole I believe one would find that the result was not changed a great deal one way or the other.

Q. That is whether you use an arithmetic average or a weighted average?

A. Yes, I mean such comparisons as I have seen of that character have made a very little bit of difference in the essential picture which was given of what was happening in a market.

Q. Now looking at the chart, Gordon's Exhibit 6, what in a general way does that chart show to you as an economist; assuming of course the accuracy of the index figures and the accurate portrayal of those figures upon the chart?

A. Of course the thing that strikes one at first is the general [fol. 1317] movement of these various price indices, that is, that they show the same general movement in a given time. The second thing that you get is the inflation or general trend to a peak in 1920, which came, looking at the whole group, with the inflation of prices in what we may call the wartime price revolution. The next thing is the extraordinary upward movement and the burst of expansion which came in 1919 and in 1920. The all-commodities index is generally a much less flexible index than other commodities, but you frequently find, since it represents an average, that there will be some above and some below. That is, when you get an index like the index which is shown here in the line of green, that is the all-commodities index, you have there a figure which is the result of some movements which were much wider and some of course much less in the periods 1919 and 1920. Through the fall of 1920, we had a most extraordinary upward movement of prices, the result of an inflation of the credit system. With the beginning of the down swing, the crises in the summer and fall of 1920, we had a very sharp and precipitous deflation of prices. And since the latter part of 1921 and into 1922 we have had an upward movement of prices which represents the normal response to the upswing of the business cycle.

Q. And have you found—

A. I have looked at this thing now simply to get the general swing of the chart.

Q. Have you found from your experience with other industries particularly and with the industries of the country as a whole that the movement which you have referred to as the upward movement of 1919 and 1920 was a general, sharp upward movement?

A. That was a very general sharp upward movement. If one—shall I refer to one of these other industries?

Q. Yes, go ahead.

A. If we take for example the paper industry; these also are index numbers, the index numbers having been prepared by the Com-[fol. 1318] mittee on Economic Research; that shows for book paper from a low of 94 in the summer of 1919, prices continued to rise steadily to an index number of 193 in August and September of 1920 and then dropped to a low point with the index at 77 in May, 1922, and then slowly recovered. To contrast that with paper board prices, we find that from a low point in the summer of 1919 which is measured by the index number of 86, they moved sharply upward to an index number of 227 in September of 1920, and then declined to

a low point in August and September of 1921 of 70. That is they dropped to less than one third of their previous price, whereas book paper, which had dropped from 93 to 77, had dropped something less than one third. This situation of differences as between those industries which we have examined shows that some prices on some particular commodities of the same general industry move with much more amplitude than do others. There are some commodities which are highly responsive to the stimulus of the cycle and other very sluggish.

Q. Have you graphed those movements?

A. Yes.

Q. Are these the graphs (handing paper)?

A. Yes.

Q. On the opposite side—

A. On the opposite side those show the difference in the amplitude of the movements as between those different grades.

(Said Graphs marked Vanderblue Exhibit No. 1, November 22nd, 1923, R. W. P. and received in evidence.)

Q. Have you a similar study made of the prices of hides, skins and the principal varieties of leather for that same general period?

A. Yes, we have, and it shows the same general relationships. It also shows the relationship of the movements of the raw material [fol. 1319] in substantial timing with the movements of finished product; that is both for goat skins, kid upper, calf skins, calf upper, hides, side upper, oak sole leather and union sole leather. As between the two different kinds of sole leather for example, there was some difference in the amplitude; that is, union soles ran through a larger cycle."

(Said study marked Vanderblue Exhibit No. 2, November 22, 1923, R. W. P. and received in evidence.)

"Q. Now, Professor Vanderblue, would you expect to find a rather close relationship or dependence of the demand for the product of maple flooring upon the volume of new building construction in the United States?

A. The demand for maple flooring would come only from new building or for alterations in old buildings, and the great, important market would be for the increased demand in the construction industry.

Q. Would you consider it, therefore, a sound and desirable comparison to make, to compare the demand for maple flooring with the volume of new building construction in the United States?

A. That would measure the general movement of the demand, that is the demand would be expressed in orders, but the increase in building construction, the statistical series we have of both contracts awarded and permits granted, would indicate the direction in which you would expect the maple flooring business to find its demand appearing.

Q. Are you familiar with the figures compiled by the F. W. Dodge

Company on the value of new building contracts awarded in the [fol. 1320] United States?

A. Yes, we use those figures in our own studies of the building industry, both the F. W. Dodge figures and the figures for the values of building permits.

Q. And are those figures regarded generally as an authentic source of information on this subject?

A. They are.

Q. What is the source of the information as to the permits issued, which is generally used?

A. I am not sure whether there is any other source than Bradstreet's or not. Bradstreet's regularly publish those, and of course we use the Bradstreet figures to check with them.

Q. They are the ones generally used?

A. They are the ones generally used.

Q. That is, Bradstreet's figures are given for permits issued in various cities in the United States?

A. Yes, and that comes out weekly.

Q. If you will refer now, Prof. Vanderblue, to Gordon's Exhibit No. 12, which shows in chart form the relation of new orders booked by the members of the Maple Flooring Manufacturers Association to the volume of new building contracts awarded in the United States, corrected for seasonal variation, I will ask you first whether you are familiar with the making of such corrections for seasonal variation?

A. Yes.

Q. And whether you regard such corrections as being desirable?

A. In our own studies of the building industry and other industries where there is a seasonal movement apparent we always make [fol. 1321] such correction, because without it the essential economic relationships would be hidden by some essentially seasonal movement.

Q. And assuming then that this chart, Exhibit 12, correctly graphs the index figures which accompany the chart and that of course the index figures are accurate and that the correction for seasonal variation has been properly made, what would you say this chart, Exhibit 12, evidences to you as an economist as to the relationship between these two?

A. It substantiates that generalization I applied, namely, that there is a close correlation between the new building that is going to take place and the orders booked, that is the demand, and the evidence indicates that the demand which I assumed would appear actually did appear.

Q. In this industry?

A. Yes. In fact, the correlation is very marked.

Q. As close as you would naturally expect to find such a movement?

A. Yes, you would not expect that every very slight movement in one would be represented by a movement in the other, although there is—it is a very striking correlation; I mean the timing of the low point and of the high point is very close together.

Q. If you will refer back just for a moment to this chart, Gordon's Exhibit 6, you will note, Prof. Vanderblue, that during the period

beginning about the middle of 1919 and for the remaining period pictured upon the chart there is a reversal of the price level; that is to say, up to the middle of 1920 the price of the product was for [fol. 1322] the most part upon a considerably lower level than the price of all commodities, all building materials and lumber; whereas in 1920 and for the balance of the period the price of the product assumes a somewhat higher level than the other three price indices mentioned. Can you offer an explanation for that condition and has it a relationship to the volume of building construction in the United States?

A. In the first place you find that during the period, if you look at the exhibit which has to do with new orders and so on, you see that during the period from 1907 to 1918 the new orders booked fell off very sharply. That means that there was some reason for the demand being very small in that period. Now assuming the statement that in the period, May, 1917, to the winter of 1918-19 we had the control of the utilization of lumber necessarily in the hands of the United States Government on account of the war emergency, we can understand how the price for this commodity, which is highly specialized and for which there could be no possible demand except minor replacement demand, would not feel the stimulus of the inflation of prices which was shown sharply by other commodities and which is illustrated in an average way by the movement of the all-commodities index from a basis substantially the same as the product basis in 1918 to a level very considerably higher, although that is a highly inflexible series. I mean the all-commodities index of the Bureau of Labor Statistics is sluggish, it does not move up the cyclical movement is not wide and the amplitude is rather small. [fol. 1323] Q. I take it because it embraces so many different commodities?

A. It embraces a large number of different commodities and the detail of the thing—we would simply have to have a list in front of us to check them off. It embraces a large number of commodities.

Q. And the effect therefore which you would expect to find from a retardation of demand resulting from building restrictions and other causes incident to the war would be a lower level of prices for the commodity during that period, would it not?

A. Yes, it would be.

Q. Would that naturally result in an accumulation of demand for the product due to an under-building production?

A. In general with the population increase in the United States, and particularly with movements into urban communities that we have had, there has been a persistent expansion in the line of growth and line of trend, as the statisticians call it, for new building, and if during a period of two years—it was substantially two years—you did no building or the building which you did do was in many instances of a temporary nature, you would find that there would be stored up a demand which existed but which would not become effective in the market until restrictions were taken off. And that is the situation that one might almost say was a matter of common knowledge in the building industry. So we had stored up a building

shortage, and of course we have had in response to that building shortage a most extraordinary building boom which was recognized by—well, it was recognized last spring by the Secretary of Commerce suggesting to the President that the Government keep down its own [fol. 1324] construction to the minimum while this building shortage was being made up.

Q. And when this so-called accumulated demand found expression in new building construction in very large volume would you expect to find the price of a commodity which found its chief use in new building rising sharply to much higher levels?

A. You would expect under those circumstances that the commodity was going to feel, in addition to the stimulus of the business cycle and an accumulated trend of demand, you would expect that price to rise more sharply than the general average of prices.

Q. And looking at Gordon's Exhibit 6 and at the white line which indicates the price of the product of maple flooring, does that appear to have been the case with this product during the period when its accumulated demand was given expression by new orders?

A. Yes.

Q. Would you call, therefore, as you look at it, the movement of the line representing the price of the product, the white line, one which you would normally expect to find then under these conditions or one which indicated any abnormality?

A. Per se it indicates nothing. I mean it might very well be that this was a commodity which always moved with a wide cyclical movement. This historical record is too short. But leaving that question aside, in addition to that, this condition of stored-up demand would account for the rapid rise of this particular commodity and of these other commodities.

Q. And for an advancement of that price at a somewhat higher [fol. 1325] level than the more general prices evidenced by the all-commodities index?

A. Yes, which as I have said, is notoriously sluggish in its cyclical movement and in its response to an inflation. That does not mean, however, that because it is sluggish that it is not a good index of the general movement of prices.

Prof. Vandeburgh, will you look at the chart which is headed Index of the Volume of Building in the United States Yearly, which is marked Gordon's Exhibit No. 14? There you will note that there has been plotted a line of trend which purports to show the trend of building in the United States during the period from 1900 up to 1922; and on that same chart has been plotted the actual volume of building in the United States yearly from 1900 to 1922. Assuming the accuracy of the figures which have been taken from the sources that you have yourself referred to and the accuracy of the plotting of the line of trend, what does that Chart, Exhibit 14, show to you as an economist with respect to the product in question?

A. This line of trend, this slightly inclined upward movement of the line of trend indicates the response to the growth of the country, that is the growth in population and possibly the additional concentration in urban communities which has been noted. That is

the first thing. The second thing it shows it that during the period following 1913 it indicates that building has been very considerably below what would have been expected as a normal development during those years had there been no interception of the war, and therefore you would expect projected into the future a considerable accumulation [fol. 1326] cumulated demand which would be made up in the additional period of time. That is, a building demand is not something which you can satisfy over night; it would take some period of time with the limited resources of the industry to fulfill such a demand.

Q. That there is an upward trend in the normal volume of building in the United States is well established, is it not?

A. Well, this sort of statistical evidence I would accept in other industries, say for example the iron and steel industry. We know that there is such a trend which corresponds with the growth of the country, and we know in the railroad business there has been such an expansion. The line of trend in this country for the production of commodities is upward corresponding generally to the general growth of the country. I should have expected such an upward line of trend and I have never—you are asking me to testify to something where I have to assume the accuracy of these figures—

Q. Yes, certainly.

A. But this time I am not assuming the accuracy of the figures, I mean I am giving you a general statement on the thing.

Q. Yes.

A. I should expect there would be an upward line of trend, a line of trend inclined upward to the right, in the case of building.

Q. And is this method of fitting a line of trend for the establishment of the normal growth or increase in either any given line or in this case in building in the United States, a method which is in common use by economists?

A. Mr. Gordon I believe testified that he did this by the method [fol. 1327] of least squares. That is the method that is utilized by the Committee on Economic Research, and which, following the work which was done by the Committee on Economic Research, has been very generally adopted by economists and statisticians.

Q. Now does a comparison of price levels generally indicate anything in connection with the study of the movement of the price of a given commodity such as maple flooring?

A. You mean to compare the movement of an individual commodity with some general average index number like Bradstreet's or the Bureau of Labor Statistics?

Q. I mean a comparison of the height, the maximum to which the price has risen during a given period—I believe you have already covered that in a general way.

A. Per se it is conclusive of nothing. That is because the average figure, if you take an average of say 25 commodities, that is a fair assumption, if you assume 12 of them were an equal amount or range themselves equally above a line and 12 of them below the line and I was in the middle, you would get the average and that

average would show here. The top one might be spread away above and the lowest one away below, and likewise you could get a situation where they would be very closely compressed together and you would get the same average. So the fact that a commodity moves above or below an average figure is, per se, conclusive of nothing.

Q. And would not be at all conclusive of the question of whether or not a given price moved in accordance with the unobstructed law of supply and demand or whether it moved as the result of some arbitrary fixation of price?

[fol. 1328] A. The mere fact that a price moves in wide amplitude during a given period is not conclusive of the fact that that price is arbitrarily adjusted.

Q. But as you have said, the amplitude of the movement is one which varies very considerably with the different commodity?

A. It varies very considerably with the conditions of supply and demand of the individual commodity and the stimulus of the business cycle is differently felt by different industries. A very good illustration of that is that same leather industry. The two industries which are in the exhibits are industries which have felt the response of this business cycle relatively little, two industries that have lagged, that have not felt it. On the other hand, other commodities have moved upward pretty sharply.

Q. Now one of the things which you indicated would be of value in determining the question of whether or not the price of maple flooring had moved in response to the law of supply and demand rather than in response to any arbitrary fixation was the comparison of the price of that product with the price of its closest competitors, competing wood flooring. Will you turn to the chart which is marked Gordon's Exhibit No. 17 and is headed comparison of the prices of the product of the Maple Flooring Manufacturers Association with the prices of competing wood flooring.

A. Yes, I have that.

Q. Now, ordinarily if the price of this commodity, maple flooring, moved in response to the law of supply and demand unobstructed [fol. 1329] or uninfluenced by any special agency which tended to stabilize or fix the price, what would you expect that movement to be in comparison with its close competitors?

A. You would expect that the movement would time substantially with that of the other competitors, that is the amplitude is not necessarily so significant as the timing. It would time substantially with the others.

Q. That is—

A. The higher the price at a turning point you probably would expect the price to freeze.

Q. That is by the timing, you mean what is expressed upon the charts as the slanting of the line?

A. Yes, the general movements.

Q. Now looking at this first chart referring to this subject, Exhibit 17, what would you say as an economist, assuming the accuracy of the plotting of the figures and the accuracy of the figures plotted, this chart shows?

A. That shows the response in the prices of all these commodities to the increase in demand which was represented by the accumulated demand in the building industry. It shows that for the higher grades the increase was greater, which one would expect in view of the fact that it was residential building primarily which was held down by the war, where the high grade floorings enter in. That is, maple and oak floorings are the ones which move to the higher levels and would be the sort of demand which you would expect to be held over greatly from the war accumulation.

Q. You said something about the higher priced commodities tending to lag slightly in their price movements.

A. Well, you get—some commodities respond rather quickly to the down turn of business, when business is set for a reversal of the [fol. 1330] cycle, and some businesses respond less quickly. You would expect businesses which were well financed to move much less quickly than where the industries were, a large number of them, less well financed or with a large number of small competitors. The reason for that would be that the man at the peak of the cycle has his inventory accumulated. He may have large orders on hand and there is no occasion for him to go out and bid for business, when he would figure that it would only break his prices, when he has a large current output taken care of. And if he is doing business on borrowed money, as a good many business men were in 1920, to their sorrow, and most business men were in 1920—the bankers with whom he is doing business will certainly advise him not to break his market in order to liquidate his inventory. Business men have to take losses, and so as a matter of fact all that happened in this particular case was that they just postponed the evil day, that is all. And you would expect it if the concerns were well financed and where the commodity represented more dollars per unit. That is, where it is less dollars per unit the thing is usually more flexible.

Q. That applies generally to business; it is not of course limited to the lumber industry or any branch of it?

A. No, the same situation is apparent on those other charts.

Q. Looking at the following chart, which is No. 18, which expresses the same facts as are expressed on chart 17 except where the comparison is made of index prices rather than actual prices, does that indicate the same movement?

A. Yes, it shows the same thing. The characteristic movement [fol. 1331] of this list that you call products, is that it lagged after the others; that is, it went up much more slowly and the demand was not felt as sharply and quickly; and on the other hand, it lagged a couple of months in going down, which one could very well understand on the basis I have just given; that is, it did not start to go up—well, it started up about the same time as the others, but it went up more slowly; and on the other hand it did not start up in 1921 until the others had been on their way up and there had been a pretty marked recovery in the case of Douglas fir and Southern yellow pine.

Q. You will note that on Exhibit 17 the data from which the

prices of the various competing wood floorings were taken was the same paper "Lumber" and possibly for a few of the prices one other trade paper. Is the use of such source for prices of commodities one which is generally recognized by economists?

A. You mean trade papers in general?

Q. Yes.

A. We utilize trade papers. Some of the series that were on those charts, both in the paper and leather business for example, were taken from trade journals, and in iron and steel studies for example, where we also make index numbers of prices and production, we have utilized very largely the Iron Age figures. That is, trade journalism in the United States recognizes as one of its functions the gathering together of figures of prices, and in most instances we find that they are about the only source that is available. And of course the Department of Commerce in publishing its survey of current business is building upon material which is gathered by these [fol. 1332] associations and by trade journals.

Q. And in the making of a price comparison such as is made upon Exhibits 17 and 18 would you consider it the proper practice from the standpoint of an economist to select those grades of competing floorings which, according to the testimony of those in the trade and familiar with the trade represent the most nearly competitive grades to the three grades which are combined into the index known as the product?

A. Well, I would have to be dependent upon the expert in the trade, and with that information I would gather my figures on commodities that are really one an alternate for the other; the thing runs pretty close together.

Q. And by averaging those figures either on arithmetic or weighted average, depending upon the data—

A. Depending upon the data available.

Q. Now the next comparison which I wish to call to your attention is one which you referred to in your answer to one of the earlier questions as being a comparison which you should want to see made, that of the price of the product with the prices of the raw material, rough maple lumber, and I call your attention to Exhibit 19.

A. Well, that is about what one would expect.

Q. Assuming that the figures are accurately platted upon that chart and the figures used are accurate, what would you say that chart shows to you as an economist?

A. That chart shows in the first place this same general history of the movement of prices from 1913 to 1923, the swing up, three rather flat years, and then the inflation during the war, and after the war the deflation and then the subsequent recovery. The move-[fol. 1333] ment or the price of the product, that is substantially the same index we saw before. It is flat between 1917 and 1918 and the raw material prices were somewhat above it during that period.

Q. And I take it that the movement shown upon this chart, Ex-

hibit 19, is such a movement as you would expect to find when there was a response to the law of supply and demand?

A. Yes, they generally move together where you have—that is, you would not expect that the thing would move exactly parallel and every time you would get a turning point in one you would get a turning point in the other, because that assumes a degree of lubrication in the economic system which does not exist.

Q. In Mr. Keehn's discussion of this chart in his testimony you will recall that he makes a statement substantially like this; that in March, 1919, when the demand for building was allowed expression the price of the raw material and the finished product began a sharp advance. In this advance the product temporarily outstripped the price of the rough lumber. This condition again was caused by the difference in the degree of specialization of the two products. The manufacturers of maple flooring were less prepared to meet the demand for their product because of their relatively low activity in the years 1916, 1917 and 1918.

A. Anybody that was in the situation in 1917 and 1918, with costs rising all about him and wages going up, anybody in the maple flooring business that had accumulated an inventory of maple flooring should have had a guardian appointed over him; that is, nobody would accumulate a big inventory of maple flooring during a period of rising costs and restricted market. He would probably keep his [fol. 1334] operations down. I suppose you have an index of production here, have you not?

Q. Yes, that will come later. And that statement which Mr. Keehn makes, therefore, would seem to be justified?

A. Yes, I should expect there would be a quick sharp demand for finished product and then later that would be transmitted to the demand for the raw material, which in this case is the maple lumber.

Q. A comparison was also made by Mr. Keehn in his deposition of the price of the product with the average marketing and manufacturing costs as expressed on sheet, Exhibit 21, which follows. Assuming the accuracy of the figures and of the chart there what does that comparison indicate?

A. That comparison indicates that costs went up rather less rapidly perhaps than prices, but nevertheless they did respond. That is, wages did increase as most costs increased, and there is the same general rise to a peak in 1920 and then gradually the decline, and carried on into 1923.

Q. Would you expect to find some lag in the rise of these costs as compared with the rise of the product?

A. Economists who have studied relationship of movements of prices and wages over long periods of years have found that there is a lag between wages and the prices both on the down and on the upswing as a general thing.

Q. And why is that, in general?

A. Well, it is because of the fact that there is not a quick, sharp, open market for labor that can be made effective at once, that is all. It is a case of non-realization of what is ahead, although apparently

[fol. 1335] in a good many industries, when labor got organized, they have been a lot quicker on the trigger in the last five years than they were before.

Q. Do their prices tend to be fixed by contract over a period of time?

A. Well, yes, there is a certain amount of custom that attaches to it, and there is not any quick response, and nobody is going to bid for the labor that is in a particular place. Because, after all—it is one of the things that Adam Smith spoke of; he said of all kinds of luggage the human is about the hardest kind to transport.

Q. Mr. Keehn made a further comparison of the prices of the product with supply and demand and he took as his index of demand unfilled orders of the Maple Flooring Manufacturers Association members and his supply the manufactured product on hand. What can you say as to the justification for the use of those two sets of figures as representing supply and demand?

A. There would be no other statistical series that you would have that would show those conditions. That is, they represent the resultant of current operations and current increase in demand. At any one time they show what has happened.

Q. And you feel that that is justified?

A. Unfortunately we have all too few figures of unfilled orders and stocks on hand. If we had more of those figures we would be in a better position to avoid some of the disastrous figures of unemployment and the difficulties which appeared in the last movement.

Q. Mr. Keehn makes a statement on pages 43 to 47 of his deposition [fol. 1336] tion; probably just by glancing at it you will recall it, as to the law of supply and demand as it was generally understood by economists and as to the limitations which must be considered when applying that law of supply and demand to a given industry.

A. Well, in general as I read the statement I considered it accurate. The truth of the matter is that economists very frequently reason in terms of static conditions, and the business man never finds static conditions, and there is economic friction in instances of this phenomenon which affects business conditions, which economists call the business cycle, and which means alternating conditions of prosperity and depression.

Q. But his expression of the law of supply and demand and the limitations which apply to it you consider accurate?

A. I should consider that was sufficiently accurate for a general statement such as it purports to be.

Q. He further states, beginning at pages 47 to 67 the general movements in what are known as a business cycle. You have read that statement too, I believe?

A. Yes, I read that.

Q. What can you say about his statement there as to the general movements of the business cycle, as to its accuracy?

A. I think the statement as to the incidence of the business cycle upon the character of demand is a very satisfactory and interesting piece of analysis.

Q. Is the existence of the business cycle and its effect upon industry generally and upon industries in particular well recognized by economists today?

A. I think not only generally recognized by economists today, [fol. 1337] but it is pretty generally recognized by the more intelligent groups of bankers and business men. The fact that there have been phenomena in the business cycle has been recognized from time to time for over nearly a hundred years. Even the phrase has been utilized perhaps for sixty or seventy years, and although it has only been since the Committee on Economic Research began its investigations that we have had really accurate statistical demonstration of the fundamental relations *with* appear in the different phases of the cycle, it is a matter of, you might almost say, common knowledge that business in the United States, well, say beginning in 1837, 1857, 1873, 1884, 1893, 1903 and 1907 was at a period when we not only had a crisis but had a panic, and in between times there were some affecting conditions. There has just been made available a study by Prof. Silberling of the University of California showing the cyclical movements in British business from 1779 to 1850, which shows the same rhythms of three and four years in existence; that a period of prosperity is followed by a period of crisis and despression, and the period of depression is followed by a period of recovery and that recovery moves into a period of prosperity and that general swing from the different phases constitutes the phenomenon economists call the business cycle and which the Committee on Economic Research are studying from time to time. The years from 1919 to the middle of 1921 represented a normal business cycle, short and intense but nevertheless in its essential economic relationships normal and typical. Since the beginning of 1922 we have had an upward movement of business such as normally has followed a period [fol. 1338] of depression such as existed in 1921. That is, the business cycle is not only an international phenomenon but it is one to the existence of which economists and bankers give a great deal of attention. Such organizations as the Federal Reserve Banks are making studies of the business cycle and the Federal Reserve Board as well as our own institution and some other organizations which are engaged in studying business conditions.

Q. You have noticed the application which Mr. Gordon and Mr. Keehn have made in their testimony and their exhibits of this business cycle to the facts as they have developed them in this case?

A. Yes.

Q. Do you think that application is justified?

A. I think it is justified.

Q. Turning for just a moment to these two charts, if you will, Exhibits 23 and 24 attached to the depositions of Grant Keehn—

A. What are they labeled?

Q. Relation of prices to demand and supply.

A. Demand and supply of the product?

Q. Yes, the first one being the relationship shown uncorrected for seasonal variation and the second chart, No. 24, attached to Grant

Keehn's deposition, being the relationship of the prices of the commodity to supply and demand after correcting for seasonal variation.

A. The significant one is the one with correction for seasonal variation.

Q. What does that chart, assuming the accuracy of the figures and the platting thereof, show to you as an economist with respect [fol. 1339] to this product and the supply and the demand thereof?

A. That shows—that started in 1919. We can go back and get the other things later on. Beginning in 1919, we find that at the beginning of the year that unfilled orders, which is shown by the red line, had dropped off; that is, at the beginning of 1919 general business was at a halting point; nobody knew just what was coming out of the post-war conditions, and there was a halt in general business such as appeared in other studies of general business conditions. With the beginning of the recognition of the fact that business was not going into a prolonged depression there was a rapid increase in this number of unfilled orders, partly due to the fact that very early in 1919 there had been this increase in the number of building permits issued and in the contracts issued. We find the unfilled orders rising quickly and eating very sharply into the stocks on hand which had been accumulated but which were not of great height. That is, during the period 1917 to 1918 men were not producing abnormally large stocks. In the winter of 1919-20 we find unfilled orders have been mounting very rapidly while the stocks are being eaten into, and that simply means that the people who were wanting the material were bidding for material and they were bidding in the only way that business men do bid, by offering higher prices, and we find therefore throughout 1919 into 1920 in response to this demand from the building industry a sharp rise in the price of maple flooring.

We also find that in the early part of 1920, when interest rates were very high, when the emergency part of the demand had been [fol. 1340] filled, and as production was increasing, the unfilled orders drop off and the industry starts to accumulate stocks, and during 1920 there is a very sharp drop in the unfilled orders, which means a drop in demand, in new business coming in, and a rise in stocks on hand. And as business men in the maple flooring business realized that they had to liquidate their inventories a drop, a very precipitous drop in the price of the commodity. Then in 1921, when we find again that the demand for building, that is as expressed by contracts awarded and permits, is increasing, we find unfilled orders creeping up and that the shipments are eating into this volume of stocks on hand, and although it is substantially a year from the time that unfilled orders begin to pick up before prices rise, there is in response to the increase of demand and the cutting down of the stocks on hand to the level which is just about a level through the period, a belated but nevertheless a rise in the price of the finished product. That covers the period from 1919 to 1923 which in detail has been studied by the Committee on Economic Research in the relationships and in their figures for the building industry and their study of the building industry.

Q. This study is contained in the Harvard Economic Service dated July 21st, 1923, to which you refer?

A. Yes."

(Said study marked Vanderblue Exhibit No. 3, November 22d, 1923, R. W. P. and received in evidence.)

"The Witness: Did you want to cover the period prior to 1919? [fol. 1341] Q. Well, in a general way, yes.

A. If we look at the situation in the years prior to 1919 we find that in 1913 when we had another cyclical downturn of business as measured by the index chart of the Harvard Committee, that is the index of general business for the pre-war period, we find in that period, much less intense to be sure, but nevertheless quite real in the beginning of 1917 a downward movement of unfilled orders and the beginning of an accumulation of stocks and with the drop in prices that existed in that time. Then the only other significant thing we find when we get to 1915-16, we get some unfilled orders that eat into the stocks on hand in 1915 and 1916 and prices rise, showing the movement of the demand and supply. And then beginning in 1917, as the United States enters the war and the United States begins the wartime control of the industry, we see the unfilled orders drop off and some stocks accumulate, but the price weakens and as a practical matter the price moved within a range of about 10 per cent, it was very small for two years, although that was a period when wages and prices in general were rising very rapidly. And in that period we see that the demand side of the market which is represented by unfilled orders dropped down very low and that stocks are not accumulated on a large scale. If these fellows had been accumulating stocks in 1917 and 1918 we would find the price would probably drop more than it had, but that would be a period with no demand and no business man in command of his senses would accumulate an inventory when he was receiving no orders and had received no orders for two years.

Q. You may recall that Mr. Keehn makes the observation in [fol. 1342] his testimony upon the crisis during 1918 and the early half of 1919 when the demand was low and when the price of the product leveled out that because of the very low demand and the restriction upon building there was no incentive to the manufacturer to cut his prices in order to stimulate business and that that in a measure explains why during that period of time—

A. Well, that is another way of saying the same thing. We would not cut his prices in order to stimulate business and if he could not sell the stuff he would not build up stocks when the time he could get anything was very remotely in the future. The war had to be over and they had to be demobilized in control of industry before there was a possibility of an increase in the demand.

Q. And those peculiar conditions existing at that time are a reasonable explanation, are they not, for the leveling down of the price rather than any drastic action?

A. Yes. The stocks were pretty large and the orders did not disappear. They were getting new business. You see on the whole

in the range of stocks on hand there was not a very great accumulation, such as existed in 1921-2. They kept what was necessary to meet the demands that they were getting, and that is about all. It looks as though they were stopping, looking and listening, as far as the statistical average would show.

Q. After discussing this chart and the data pertaining thereto Mr. Keehn makes this observation in his deposition, that it is clear that the prices of the product of maple flooring have fluctuated in harmony with the forces of supply and demand and that with practically every increase in the excess of demand over supply with a natural lag came an increase in price and that with every increase in the [fol. 1343] excess of supply over demand with a natural lag came a decrease in the price of the product. Would you say that that conclusion is justified from your examination of the charts?

A. My examination of the chart shows exactly those facts, namely, that when unfilled orders rise sharply or after they have risen for a time and when stocks have been decreasing then we get a period when the prices rise, and similarly, when unfilled orders drop off and when stocks begin to accumulate men want to get liquid and liquidate some of those stocks and the price relaxes, and that therefore there is the lag which I referred to awhile ago, namely that a lot of this is done on borrowed money and there is not a perfect knowledge of what is going to come, and it is only the very fortunate and the very shrewd that get out of the market and call the turn."

(Pamphlet headed "Harvard Index of General Business Conditions in the first part of which the business cycle is explained in general terms, was marked Vanderblue Exhibit 4, November 22d, 1923, R. W. P. and was received in evidence.)

"Q. We were on the point of examining the last of the series of charts relating to the comparisons between the various elements entering into the price and demand and supply of the product maple flooring and the chart to which I now call your attention is Exhibit No. 27, being the chart expressing the relation of the production of the product to the demand and supply of the product, the chart which has been corrected for seasonal variation. Have you that chart before you?

A. I have it before me, yes.

[fol. 1344] Q. Assuming the accuracy of the figures which are platted upon the chart and the plating of the same what does that chart express to you as an economist?

A. The close correlation between the unfilled orders and the production curve shows that the supply of this commodity was increased with the appearance of an increased demand that it decreased as demand decreased.

Q. Mr. Keehn has pointed out in his deposition, in discussing Exhibit 27, that production appears to have lagged after changes in supply and demand. Is such a lag one which would naturally be expected?

A. During the period of active business the unfilled orders as is

shown by the graph, increase. This increase in the unfilled orders has given a volume of business on which manufacturers have drawn, and while they were operating on a high level they continued to operate in filling those orders, such orders as may not have been canceled subsequent to the downturn movement of unfilled orders. The correlation on the upturn, the timing, is much closer than it is on the downturn in any one of the points.

Q. It is quite true then that production does ordinarily lag after supply and demand, it does not adjust itself as rapidly?

A. Wherever you have a business with a large amount of unfilled orders you would expect that the production would continue on a high level until those orders are exhausted. As a matter of fact business men usually produce after that time and therefore accumulate stocks exactly as they did in this instance. If they had curtailed production earlier they would not have accumulated those big stocks [fol. 1345] which they accumulated which were afterwards sold on a declining market.

Q. The conclusion drawn by Mr. Keehn in this discussion of this chart, Exhibit 27, is stated on page 92 of his deposition as follows:

"Thus it is apparent that the production of maple flooring has fluctuated in accord with the factors of supply and demand. Increases in demand have been followed with a regular lag of one or two months by increases in production, and in like manner decreases in demand have been followed by decreases in the rate of production."

I take it that is substantially the statement you have made.

A. That is the statement that is shown here, yes.

Q. It appears from the studies made by Mr. Keehn and Mr. Gordon and from other evidence in the record that there has been at all times a substantial variation in the selling price which the various members of the association have asked, the asking price, for their commodity; that is for the same grade and size of the commodity. Does that fact, of such variation, assuming it to exist, have a bearing in your opinion upon the question of fixation of price? In other words, does it offer some evidence to you as an economist that there were substantial variations in the price asked at a given time for the same commodity?

A. F. O. B. the same market?

Q. F. O. B. the same point, yes, sir; either f. o. b. mill or f. o. b. delivered point, in the same market.

A. That evidence would not necessarily be conclusive. It would be indicative but not necessarily conclusive, depending upon the amount of the difference as between different mills.

[fol. 1346] Q. But it would be indicative of the existence to your mind of competition between those mills?

A. It would be indicative of a condition of competition.

Q. Have you found from the studies that you have made of various industries and industry as a whole a greater tendency today than perhaps existed in the past for a closer approximation of prices

quoted by different manufacturers in one industry for a given commodity in one market?

A. I should expect that such information as appeared in these publications from which these figures have been drawn, which on the whole have been accepted as authoritative, that the general presence of that sort of information would tend to have the differences between market very much cut down. That is, one would expect that the range between one mill's price and another mill's price would be pretty close together, particularly on a product which sold on an open, competitive market such as this one.

Q. The wider dissemination of information in the trade and the facts and knowledge as to conditions in the trade and costs of production and so forth, the less likelihood there is for a wide variation?

A. These products are not sold to amateurs; they are sold to people who know the business and we would expect in an open market there would be competition between the mills and competition between buyers and things would tend to approximate about the same price. That is the reason I said that the fact that it was fairly close in price would not be conclusive.

Q. Taking the data you have examined in the depositions of these two gentlemen, Mr. Keehn and Mr. Gordon, and the exhibits which [fol.1347] accompany their depositions, I will ask you whether or not you would agree with their conclusions that there is nothing which appears from this data to evidence an arbitrary fixation of the price of this product.

A. On the contrary, the evidence that has been presented here indicates that this business, like other businesses, moves with the business cycle and that the response has been a response to the condition of demand which was in this particular instance intensified by the postponement of building during the period of the war.

Q. You have testified to having had considerable experience in considering and in taking part in studies of different industries much along the same general lines, I assume as this study. What can you say as to the study which Mr. Keehn and Mr. Gordon have made of this subject of the price of the product maple flooring and the comparisons they have made, as to whether you feel that is fairly complete and exhaustive?

A. I think looking at the matter solely from the sort of evidence that I would look for, they have presented the evidence that I would seek for if I had been doing the job on my own account to show that this industry moved in response to the conditions of the market. The evidence that has been produced of unfilled orders, stocks on hand, the evidence of the volume of manufacture in this particular product and the price movements would be that that any economist who is seeking to investigate the situation and to secure information concerning the movement of this industry in relationship to the general business cycle would make.

By Mr. Benton:

Q. That statement is predicated, is it not, upon the testimony and [fol. 1348] exhibits in the form of charts of Mr. Gordon and Mr. Keehn?

A. I am testifying that if I had been asked to supervise an investigation of the relationships of the prices of this product to the conditions of demand and supply that I would have asked my assistant to secure for me and to make the sort of charts that have been made by Mr. Gordon and Mr. Keehn and which have been presented by them with their depositions.

Q. I mean by that, that your conclusion is predicated upon the evidence submitted by Mr. Gordon and Mr. Keehn in the form of testimony, charts and exhibits.

A. Assuming—

Q. In other words, you have not gone any further than their testimony?

A. No, accepting as we have done in each time the statistical validity of these documents and concerning which I had no part in the preparation, and taking these on that basis I am simply testifying to the fact that this is the kind of evidence that any economist who is seeking to secure an estimate of the way he would expect prices to move in the future in this industry, if he had to make a forecast of them, would secure. Does that answer your question?

Q. Oh, yes, perfectly. I just wanted to make it clear, however, that your statements were all predicated upon the testimony of these two witnesses, Mr. Gordon and Mr. Keehn.

A. It is predicated entirely upon the statistical record that is in my hand, except in the general planning of which and directing [fol. 1349] their attention I had something to do, but that was all.

By Mr. Johnston:

Q. Of course all of your testimony where you have expressed an opinion is based upon the data that has been presented to you here coupled, of course, with your general knowledge of the subject?

A. Well, I think without exception we have tied up or made those statements perfectly clear. I have stated my own opinion and it has been stated as my opinion and the fact that it was my opinion I think is evident.

Mr. Johnston: I think that is all.

Cross-examination.

By Mr. Benton:

Q. I just want to ask one or two questions. One is to make a little clearer probably the long hypothetical question propounded to you by Mr. Johnston, or not to make it clearer but to give you another question based on different facts; assuming that the membership of the Maple Flooring Manufacturers Association produces ap-

proximately 70 per cent of all the maple, beech and birch flooring produced in the United States, what would be the possibility of a price control of that commodity by the association?

A. I should say that question cannot be answered yes or no. If you assume that that 70 per cent—that there is no flexibility in the other elements of the supply and that the other 30 per cent is not going to go aggressively after business, which ordinarily happens in a competitive market, the price that might be set by the 70 per cent might control the market. But that would not be likely to happen, [fol. 1350] and that is the reason I say that the question cannot be answered yes or no. That is, I do not believe there is enough of an element of 30 per cent of the market, assuming the other 70 per cent or something—which is what you asked me to assume?

Q. Exactly.

A. I believe that 30 per cent in the hands of capable business men in an industry where they could expand their operations and their plant would present no airtight combination—any situation of the price being set by the others at an unreasonably high level, at a level which would result in inordinately large profits over a period of time.

Q. What is the explanation of the extraordinarily high price of maple flooring during the year 1920, in view of the low volume of new orders received by the manufacturers during that period of time, as is shown by the charts submitted by Mr. Gordon, I believe.

(Discussion off the record, the witness explaining charts to Mr. Benton.)

A. This chart is the difference between new orders and production. Now in the first half of 1920 new orders—or the first quarter—dropped off and production in the first quarter of 1920 was about at its peak. The difference between those two is unfilled orders, of course, do you see?

Q. Yes, I see that.

A. So that when you are producing at a high level and are making deliveries and your men are not filling new orders, as a matter of fact we had a very bad condition of railroad congestion and there was no use placing new orders in that particular period. There was a [fol. 1351] railroad strike on. The result of that situation would be that your unfilled orders in the face of mounting production would drop off, when your new orders do not come along, or for two reasons; things are just about ready to bust in business, and the next thing is that you have a congestion. Now the fact that you are going to get your bust in business—let me say that on the building situation you will find that building permits and building contracts awarded both dropped off very sharply.

Q. In 1920?

A. In the early part of 1920, which shows that the demand which makes itself felt in new orders began to drop off at the very beginning of the year. I mean that is the explanation for the phenomenon you have in mind.

Q. If the demand dropped off before 1920 or at the beginning of

1920 what is the explanation for the very slow dropping of the price? The price was high during the major portion or all of 1920.

Mr. Johnston: No, the price started to fall.

Mr. Benton: The chart shows it.

A. The price starts to go down in the middle. Really the precipitate downward movement starts at the middle of the year.

Q. But it was away above ordinary for four fifths of the year. It is clear on the chart that it started down, but it did not get very far—

A. What you mean by ordinary is a very difficult phrase, when you are coming into a period of crisis. Right in between 1916 and 1920 we had a price revolution and deflation. That is, the general [fol. 1352] level of prices was about we will say 220 as measured by the Bureau of Labor Statistics, and dropped down as low as say 140, and in 1913 it had been 100. So you had a tremendous price revolution in all the general level of prices. Now as to why that price did not immediately drop, I mean just like that, quick on the trigger, the answer to that would be that among these people that were in business during this period, business men in general, any business man who was in business in the first half of 1920, there was not general recognition of the fact that we were in for a period of bad business until fall. Now during that period the unfilled orders are still high, although the production rate is high and under those circumstances there is no particular reason why men should drop their prices. After all, no business man is going to drop his prices if he has got his mill output taken care of at the existing level.

Q. That is true, but all of your answers have been based upon the working of the law of supply and demand, that price usually follows the demand, and in this instance in 1920 it did not follow demand.

A. No, there is a slight lag.

Q. But there is a considerable lag, I think.

A. It depends on what you mean. I am speaking of lags in terms of months.

Q. Well, it is eight or nine months, I take it, from that chart.

A. No, you see what happens is this. In a period of this kind when men have orders it is not until stocks are accumulated and cancellations come in that there is any motive, particularly if you [fol. 1353] are doing business on borrowed money, which may be borrowed as it was in 1920, pretty much up the hill, to liquidate an inventory. Price liquidation comes after people realize that they are in for trouble. Now you do not get—the working of the law of supply and demand as evidenced here, and of which these are significant figures—figures of unfilled orders represent two different elements. I mean production is going on to cut that down—nobody I should say would expect that so quick on the trigger, as you have implied. I should expect if that happened within six months, if we found unfilled orders started dropping off over a period of six months and inventories to accumulate it would be at least six months before prices would break. And this is not an abnormally long lag.

Q. But do not those charts show that the lag in 1920 was considerably slower than it was theretofore?

A. No, I should say if you look at the chart for 1913, at the last business cycle, you will find unfilled orders came down here and your stocks began to accumulate and it was about the same time, it was not a great deal of difference, before the price even made the turn, which is comparable to that. It is about the same in 1913. Over here in 1917 it is about the same, the same as it was over here. The unfilled orders come down. Now those are the only ones for which we have figures. I would say that the lag was not significantly longer, if it was any longer, if it was as long in 1920 as it was in the others. You see what I mean?

Q. Yes, I believe I do now.

A. The lag is from the 1st of February, 1913—well, to the early [fol. 1354] fall of 1913, you have about the same length of time. You have your stocks on hand moving up. Here you get a similar situation. Now of course this was a very minor cycle. This cycle in 1913 was not of great intensity. If one were to compare the movement of the Harvard business curve for that cycle with the movement in 1907, which was the last time when we had a general break in business comparable to that which came in 1920, you will see that there is a considerable difference between the cycle which culminated in the spring of 1913 and that which culminated in 1907 or that which is shown on chart 1 of Exhibit 3, where the Harvard business curve for the post-war period is shown. In 1920 when the break came we had a very sharp break, the timing of which shows very close correlation with the movements of the curve for maple flooring, although on the recovery the maple flooring price seems to have been much slower.

By Mr. Johnston:

Q. Is not this true, Prof. Vanderblue, which may have confused counsel in reading these charts, that these charts are comparisons only insofar as they indicate the movement of the lines; that is to say, the space indicated between the curved lines and the straight lines on the chart are of no significance in these comparisons?

A. We were just speaking of the question of lag, that is all we were speaking of, the question of the time lag.

Q. That is indicated by the point at which the price starts to recede or advance?

A. Yes.

Q. And the extent to which the white line indicating the price of the product is above the other lines on the chart is of no significance in this comparison?

[fol. 1355] A. We were simply comparing the time element and the question was whether or not the lag behind the drop in unfilled orders in 1920 was anything extraordinary. By referring to other situations which are in any sense analogous we see that it is not, and I supplemented my statement by the fact that the other pre-war cycle for which we have figures here shows a much less violent movement of prices than that which came in 1920-21.

Mr. Benton: That is all."

[fol. 1356] Thereupon the following testimony was taken and the following proceedings were had in open Court:

Mr. Johnston: I would like to offer in evidence and ask to have marked as Defendants' next Exhibit a statement which I submitted to counsel for the Government concerning the standardization of grades and sizes.

(Said statement was marked Defendants' Exhibit BB and was received in evidence by agreement of counsel that the person making such statement would testify to the facts set forth therein if called upon the stand.)

"I should also like to offer as the next exhibit a statement prepared by the J. W. Wells Lumber Company showing the average prices of rough maple lumber during the period from 1918 up to 1922 inclusive or the first two or three months in 1923. This statement was prepared from all sources available including the prices paid by the J. W. Wells Lumber Company, the prices paid by other lumber companies wherever that data was available and the data available from the trade publications. There also is in here the price of labor too. This is the market upon rough maple lumber of the three grades employed in the manufacture of maple flooring as prepared by the Wells Lumber Company monthly, showing the average price weekly would be too detailed.

Mr. Fowler: We will not object to that being filed, not as absolutely accurate but that Mr. Wells testified to it.

(Said statement was marked Defendants' Exhibit CC $\frac{1}{2}$ and was received in evidence by agreement of counsel that the person making such statement would testify to the facts set forth therein if called upon the stand.)

[fol. 1357] GEORGE W. KEEHN, recalled to the stand, testified as follows:

Direct examination.

By Mr. Johnston:

Dr. George W. Earl, who was the president of the Wisconsin Land & Lumber Company, never signed the Articles of Association of the present defendant Association and never became connected with said Association as a member. At the time the present Association was being organized in the spring of 1922, Dr. Earl's health was very poor and he was not able to come to the meetings. Later he went to the Pacific Coast so we could never get from him a final decision as to whether or not his company would join the Association. His company, the Wisconsin Land & Lumber Company, contributed data to the Association during the year 1922. His Company also contributed statistical data in January and February of 1923, which were included in our reports to Association members. About the middle of March, 1923, they ceased to send in data to the

Association. The Wisconsin Land & Lumber Company paid its share of the expenses of the Association during the first quarter I think of 1922. They contributed nothing to the expenses of the Association after the first quarter of 1922. The reason they paid a share of the expenses of the Association for the first quarter of 1922 was that an extensive advertising campaign had been planned during December, 1921, and Dr. Earl felt that his Company should bear its share of this expense because he was very much interested in the advertising work of the Association. The document you hand me is a financial statement of the Association from January to June, 1923. That is the last financial statement issued.

[fol. 1358] (Said document marked Defendants' Exhibit BB-1 and received in evidence.)

I have made a study of the production capacity of the members of the Maple Flooring Manufacturers' Association; also of the production capacity of manufacturers of maple, beech and birch flooring in the United States who are not members of said Association.

"We got a list of all the non-member manufacturers in the United States of Maple, Beech and Birch flooring, so far as we could ascertain their identity. We got some of the names out of the lumber trade-papers; some of them we obtained through members of the Association; some of them we obtained through their selling representatives—really through the members—located in the Eastern markets and in the southern markets; others we obtained the names of through non-members who wrote to us giving us the names of other non-members manufacturers of Maple, Beech and Birch flooring in their vicinity, and we have compiled a list of them arranged in alphabetical order, and also arranged by states, and according to the best information we could get from all sources there seemed to be about 73 of them, and about 31 of them gave us data regarding their manufacturing capacity per year, and we also asked them for their production, we thought it might be interesting to know what their production was."

We addressed communications to the 73 firms above mentioned, asking for their production and capacity. The following letter addressed to the Keystone Manufacturing Company, Elkins, West [fol. 1359] Virginia, dated September 14th, 1923, is a form that was used for the purposes above mentioned. Said letter reads as follows:

Keystone Mfg. Co., Elkins, W. Va.:

"As you probably know, the Government has commenced suit to dissolve our Association, and it alleges, among other things, that we represent approximately 70% of the total manufacturing capacity of Maple, Beech and Birch flooring in the United States.

In order to refute the allegation, we are collecting and compiling data regarding the annual output and manufacturing capacity of flooring mills which do not belong to our Association, and we would like very much to have the following data from you and hope it will be agreeable to you to give us the data:

Year	Annual production in M ft.				Manuf'g capacity per year in M ft.
	Maple flooring	Beech flooring	Birch flooring	Total	
1922.....	M	M	M	M	M
1921.....	"	"	"	"	"
1920.....	"	"	"	"	"
1919.....	"	"	"	"	"

After we get these data compiled, we shall be glad to exchange them with you as we feel certain that you will be interested in knowing the annual production of Maple, Beech and Birch flooring and the manufacturing capacity of the flooring plants.

Hoping to hear from you soon and thanking you in advance for your assistance, we are,

Yours very truly, George W. Keehn, Secretary

To the 73 letters sent out we received 31 answers. The data contained in said answers were tabulated. We arranged the manufacturers in alphabetical order and by states in order to show what their production was, and what their manufacturing capacity was. [fol. 1360] We also took the year 1920 and showed the production of maple, beech and birch lumber in the different states and territories.

"Mr. Fowler: As I understand we have an agreement; they have a number of replies and we have a number of replies also, and we agreed that they shall use their replies, and they agree that we may use ours."

The Witness: "This tabulation shows the names and addresses of the manufacturers of Maple, Beech or Birch flooring who were not members of the Maple Flooring Manufacturers Association, and the one that I have before me shows the Maple, Beech and Birch flooring capacity in M feet for the year 1920, and the production in M feet for the year 1920, and we have arranged them by states. For instance, New Hampshire, Vermont, Massachusetts, New York, Michigan, Wisconsin, Minnesota, Illinois, Ohio, Tennessee, West Virginia, Virginia, and Arkansas. Some of the mills that gave their capacity stated that their capacity was used principally in the manufacture of Oak flooring, but it has been brought out in the testimony that the machines that manufacture Oak flooring can also manufacture Maple, Beech or Birch flooring and we have prepared another statement showing the cut of Maple, Beech and Birch lumber by states during the calendar year 1920, taken from the Government's report of Forest Service Bulletin, No. 1119, by which we wish to show that there was plenty of raw material available for the manufacture of Maple, Beech and Birch flooring—Maple and Beech principally—Maple towards the Atlantic Coast and some Beech and Maple in the South, by transporting it a distance of say two hundred to two hundred and fifty miles, such as is done by our members in [fol. 1361] the manufacture of flooring; in other words, many of our members located in lower Michigan bring in lumber from upper Michigan and Wisconsin to manufacture into flooring.

According to the data given us by those manufacturers, thirty-one of them, they show a capacity in 1920 of 173,550,000. Twenty-nine of them reported their production for the year 1920. That shows a total production of 34,722,000 feet, and we have that sub-footed by states and territories, etc., to correspond with the cut by states and geographical groups."

(Said tabulation marked Defendants' Exhibit CC and was received in evidence.)

We have compiled statistics regarding the manufacturing capacity in M feet and production in M feet of the members of the Maple Flooring Manufacturers Association. These statistics are arranged by states.

"I wish to state, in advance, that at the request of the Department of Commerce, Bureau of the Census, we collected this data regarding the normal capacity of the plants of the members of the Maple Flooring Manufacturers Association some time in 1922, but we have considered this as their capacity for 1920, although as a matter of fact their capacity in 1922 might be larger than in 1920, because some of them have improved the equipment in their plants and installed other machinery. This shows the capacity of those members amounted to 154,800,000 feet, assuming that their capacity in 1920 would be about the same as it was in 1922. And their production in 1920 was 129,523,000 feet. That takes in the twenty-one members of the present Association, because the Oval Wood Dish Corporation [fol. 1362] were not then members of the Association and they were not then manufacturing flooring."

(Paper last referred to by the witness was marked Defendants' Exhibit CC-1 and was received in evidence.)

"The next table we have is Production Statistics of members of the Defendant, Maple Flooring Manufacturers Association, going back as far as we could compare like with like, where the statistics were continuous. I will illustrate that: in the year 1913, fifteen members produced 104,919,000 feet; in 1914, 104,231,000 feet; in 1916 they produced 100,677,000 feet; in 1917 they produced 92,376,000 feet.

"Now we come to the statistics of sixteen members. Pardon me, I can go right straight through and give the statistics of the fifteen and then you have the comparison.

"In 1918 the same fifteen members produced 62,474,000 feet; in 1919, 74,681,000 feet; in 1920, 83,464,000 feet; in 1921, 67,776,000 feet; in 1922, 99,709,000 feet.

"The Court: Those are the fifteen members who have been members of the Association from 1913?

"A. Yes, whose statistics are continuous without a break. Now we skip to 1919, we can get a comparison:

In 1919	twenty-one members,	119,451,000 feet
In 1920	" " "	129,523,000 "
In 1921	" " "	106,329,000 "
In 1922	" " "	144,862,000 "

"Then we come to the Oval Wood Dish Corporation, 1,390,000 in 1921 3,451,000 in 1922. The Oval Wood Dish Corporation figures [fol. 1363] for 1921 cover five months of manufacture.

"So the total production of the twenty-two members of the Association which are organized in 1922 amounts to 148,313,000 feet.

"Also as additional information is shown on the side the number of matchers each plant has installed for the manufacture of Maple, Beech and Birch flooring."

(Paper last referred to was marked Defendants' Exhibit CC-2 and was received in evidence.)

I might say there have been many vicissitudes in the manufacture of maple, beech and birch flooring. Take as an illustration, the T. Wilce Flooring Company, who in 1912 produced 14,733,000 feet of maple, beech and birch flooring. That company is not included in this tabulation. In 1920 said Company produced only 330,000 feet of maple flooring; in 1921, 551,000 feet of flooring; in other words, there was a reduction of about 98 per cent in the amount of flooring produced in 1920 as compared with the amount produced in 1912. We have another tabulation here, the data contained in which were taken principally from the Forest Service Reports. This is for the purpose of comparing the available supply of rough maple, beech and birch lumber with the manufactured product during the year 1920. We have used the year 1920 because that is the last year for which figures as to rough lumber are available. In this statement we have taken the stands of maple, beech and birch timber in the United States by regions according to a report of the Forest Service on Senate Resolution 311, which is known as the Capper Resolution, I think. This statement appears on page 34 of the report. The table "Timber Depletion; Lumber prices; Lumber export; Concentration of timber ownership; report on Senate resolution 311 by the Forest Service, U. S. Department of Agriculture, June 1, 1920, issued by the Government Printing Office at Washington, in 1920." On page 34 of said report is said. "Oak is easily the leading hardwood of the country with a total stand of 157 billion board feet, followed by three Northern hardwoods, Birch, Beech and Maple having together 91 billion board feet. See Table 7 and 8." The report gives the stand of birch, beech and maple as 90,784 million feet, which is distributed as follows:

New England	8,143,000,000
Middle Atlantic States	16,897,000,000
Lake States	36,076,000,000
Central States	20,505,000,000
South Atlantic	4,522,000,000
And the lower Mississippi	4,611,000,000
Making a total of	90,784,000,000

That, of course, does not allow for the timber cut of 1920, 1921 and 1922, as we obtained from our members data of their ownership

of Maple, Beech and Birch stumpage as of January first, 1923. We endeavored to find out by correspondence with the Forest Service what the estimated reduction would be in this stand so as to have a comparison as of January 1st, 1923, with the stumpage owned by our people, so on June 29, 1923, we wrote to Mr. R. V. Reynolds, Forest Examiner, and to Mr. Albert H. Pierson, Statistician in forest products, Forest Service, U. S. Department of Agriculture, Washington, D. C., as follows:

[fol. 1365] "We are gathering data regarding the stand of Maple, Beech and Birch timber in the United States, and it occurs to us that perhaps you can give us the approximate cut of Maple, Beech and Birch lumber, each species separately for the year 1921, and possibly for the year 1922. Approximate quantities would answer our purpose, if the data has not yet been compiled.

According to the Forest Service report on Senate Resolution 311, dated June 1, 1920, entitled 'Timber Depletion, Lumber Prices, Lumber Exports, and Concentration of Timber Ownership' on page 34, the stand of Maple, Beech and Birch timber was estimated at 91 billion board feet.

According to bulletin 1119, dated April 25, 1923, entitled 'Lumber Cut of the United States 1870-1920', the following was the reported production in 1920 of:

Maple Lumber	(page 46, table 13)	875	million feet.
Birch	" (page 48, table 19)	405	" "
Beech	" (page 49, table 22)	325	" "
Total		1605	

Would it be reasonably accurate to estimate the cut in 1921 and 1922 at about the same rate as the cut of 1920, which would make the total cut for the three years about 5 billion feet, which deducted from the estimate stumpage of 91 billion in June 1920, would leave about 86 billion feet as the estimated stand of Maple, Beech and Birch timber at the beginning of 1923?

In your opinion would it be reasonably accurate to estimate the cut of each wood by States during the years 1921 and 1922 in about the same percentages as during the year 1920, as shown in Bulletin No. 1119?

We shall greatly appreciate any information or estimates you can give us bearing on this subject. If you have any data regarding average values of Maple, Beech and Birch, f. o. b. mill, for the years [fol. 1366] 1921 and 1922, such as is given in Bulletin No. 1119 for the year 1920, we shall be glad to have it.

Thanking you in advance and with best wishes, we are,

Yours very truly, George W. Keehn, Secretary."

To which they replied as follows:

"Washington, July 10, 1923.

Mr. George W. Keehn, Sec. Maple Flooring Mfrs. Assn., 1045 Stock Exchange Building, Chicago, Ill.:

"In reply to your letter of June 29th:

We shall not be able to furnish you any figures for the year 1922 as the census for that period is now in course of compilation. The following tabulation shows the national production of the hardwoods that interest you for 1921:

	Value f. o. b. mill
Beech, 190,387 M feet.....	\$26.99
Birch, 319,192 M ".....	31.53
Maple, 609,852 M ".....	30.34

(The total of 1,119,431 M feet in pencil is my addition.)

"The method which you propose for finding the present stand of Beech, Birch and Maple sounds reasonable enough, but it does not take into consideration the growth which has taken place; and 1922 figures, as stated above, cannot be furnished.

The only line we have on 1922 production is a recent statement by the Bureau of the Census which prepared a table comparing the cut of 712 identical mills in 1921 and 1922. Some of these mills were undoubtedly hardwood mills. The results seem to indicate a cut of 25.6 per cent greater in 1922 than in 1921, and the increase apparently took place in all regions except the far northeastern states. Nevertheless, this basis would be difficult to figure upon as the hardwoods form only one-fifth of the total cut, and there is no [fol. 1367] means of knowing to what extent they were represented in this partial exhibit.

The lumber of large mills compared is one-half or more in each of the Lake States, and as you may wish to make an estimate of 1922 production on this basis, a copy of the statement is enclosed. You could get the best available forecast of the State production in this way, but it would not be better than an intelligent guess, and of course it would not give production by species.

Very truly yours, R. W. Reynolds, Forest Examiner."

We concluded to estimate the cut as about 5% of the stand during those three years; not knowing anything about the growth we could not of course estimate that. If we allowed for the growth, then the total stand would be that much greater; then the percentage of the stand owned by our members would be that much less.

The Court: To one at all acquainted with the situation, it will be known that the accuracy of these statistics, whether gathered by the Government or some one else, is only approximate.

A. Yes, sir.

The Court: For many reasons. In the first place, as stated there, the growth is not taken into consideration. In the next place, there has been a steady increase as the years have gone by in the closeness of the cut; in other words, timber which a few years ago would not have been cut at all, is now estimate and cut. In the next place, there are growing up in certain sections of the state of Michigan, on pretty nearly every square mile, little portable mills, cutting a few thousand feet. That has not been taken into consideration at all nor attempted to be segregated. Those are matters that all tend to show that only an approximate estimate can be made.

A. Of course the Government does not get complete statistics from [fol. 1368] all the different mills in the United States. They represent only a portion of the output, the same as in our case, we have no complete statistics of production of Maple, Beech and Birch in the United States, because we have no way of knowing what the non-members produce.

The Court: As the timber grows scarcer, it has been the history, and to residents of Michigan it is common knowledge—it has been the history that the number of little portable mills has increased and the number of the large mills has decreased, and pretty nearly every farmer has his wood lot, and in the Beech and Maple section he has a few trees which are not taken into consideration by anyone until a little portable mill is set up in the neighborhood and the lumber is produced.

Q. What is the result of that tabulation then, using the figures as you have explained them?

A. We have made a tabulation here showing the Maple, Beech and Birch cut in 1920, according to the U. S. Department of Agriculture, Bulletin No. 1119, quantities in M feet, arranged in geographical groups, by regions, according to the stand of the timber, and also sub-divided into states. Then opposite we set the manufacturing capacity of the manufacturers who are not members of the Association, so far as we have been able to ascertain it, and the amount of their production by geographical groups. Then on the other side, we have shown the production of the members, you know, of the present Association, all compared on the 1920 basis.

Now, for example, the production of Maple lumber in the New England states,—it is hardly worth while to name them, we all know which they are—was 33,729,000 feet of Maple; 14,012,000 feet — [fol. 1369] Beech; 45,866,000 feet of Birch, a total production of 93,607,000 feet.

And according to the data we have regarding manufacturing capacity, the non-member mills who reported to us and who are located in that territory, have a manufacturing capacity of 13,100,000 feet. Their production was 2,797,000 feet.

The Court: Now, you are talking about flooring?

A. Flooring, yes. I have, however, said that this does not take into account any saw-mill production of lumber.

The next group, the middle Atlantic States, being New York, Pennsylvania, New Jersey, Delaware, and Maryland. I might say

that opposite this we have that New England is so much, but we read that before and we won't do it again. The production of Maple lumber in that territory was 112,993,000; of Beech lumber it was 78,879,000 feet; of Birch lumber it was 39,800,000 feet, a total of 231,672,000 feet.

The only report we have of capacity in the manufacture of flooring, Maple, Beech or Birch flooring, from that territory in the year 1920, 7,750,000 feet of flooring capacity, and 3,846,000 feet of flooring produced.

Now, we come to the Lake States, Michigan, Wisconsin and Minnesota. The production of Maple lumber in those three states was 468,708,000 feet; Beech lumber 43,673,000 feet; Birch lumber 242,598,000 feet, a total of 754,979,000 feet.

Now, the manufacturing capacity of non-members of flooring in that group reported to us is 49,700,000 feet, and the production in 1920 was 21,681,000 feet.

Now, I will give the figures for the Central states. Some Maple grows in Illinois but it is not used commercially, but it is included. The Central States are Illinois, Iowa, Indiana, Ohio, Kentucky, Tennessee, West Virginia, Missouri. The cut according to this same bulletin was 129,441,000 of Maple; 106,866,000 of Beech; and 13,839,000 of Birch, a total of 250,146,000.

The manufacturing capacity of non-members reported to us from that territory was 70,000,000 feet and the production was 4,178,000 feet.

Now Fowler: That is flooring?

A. Yes, flooring.

Now, the South Atlantic states Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama. The Maple lumber output 13,871,000; Beech 6,930,000; Birch 4,206,000; a total of 25,007,000. The manufacturing capacity reported to us was 25,000,000 feet from that territory of flooring, and the flooring produced was 2,072,000. I want to say this capacity embraced Oak."

Then we come down to the other states, Arkansas, Mississippi, etc. They show same comparisons, and what I wish to state is that in reporting this capacity to us, some of them included their Oak capacity. Now, when we get the whole thing added up it shows a production of Maple, Beech and Birch lumber, according to the Government report of 768,345,000 Maple; 264,572,000 Beech; 346,577,000 of Birch, a total of 1,379,494,000.

Now, the Government estimate on the total production in the United States at that time is 875,000,000 of Maple, 325,000,000 of Beech, 405,000,000 of Birch, a total of 1,605,000,000.

Now, the manufacturing capacity in flooring reported to us by these non-members showed 173,550,000 feet, and the amount that they produced as 34,722,000 feet in 1920.

Now, we have gone on and shown by 21 members, or 22, members of the M. F. M. A., Maple, Beech and Birch flooring, quantity in M feet of capacity and production in M feet.

Q. Just give us the total. They are shown in detail, are they not?

[fol. 1371] A. Yes, they are shown in detail. The capacity we have is 154,800,000 feet; the production we have is 129,523,000 feet.

Now, we have figured that out as to the amount of rough lumber, required, about as Mr. Hughes did the other day. Now, if we take the total production of Maple, Beech and Birch lumber in the three Lake states in 1920, it was 755,000,000 feet in round figures; the capacity was 154,800,000 feet and the production was 129,523,000 feet.

Now, if we compare the rough lumber required, according to the total production of flooring, we estimate that it would require 168,211,000 feet of rough lumber to produce 129,523,000 feet of flooring, allowing 23% waste in the manufacture of flooring; in other words, out of 1,000 feet of rough lumber we estimate we get as an average 770 feet of flooring. On that basis, assuming the entire product of Maple, Beech and Birch lumber is considered available in the manufacture of flooring—and it is a fact some of our members do manufacture the entire product of the lumber into flooring—it would require twenty-two per cent of the total cut in the manufacture of flooring, meaning the total cut of Maple, Beech and Birch lumber.

Now, if we segregate our Maple flooring from our Beech and Birch flooring, if we estimate that the output of Beech and Birch flooring is about 10% of the total flooring output, and thus endeavor to ascertain what proportion of the Maple lumber cut would be required for the manufacture of Maple flooring, estimating the waste at 20%, we estimate the total quantity of Maple lumber required would be 151,390,000 feet, or 32% of the Maple lumber cut, considered by itself, in three Lake states.

(Paper above referred to was marked Defendants' Exhibit CC-3 and was received in evidence.)

[fol. 1372] We have compiled statistics regarding the manufacturing capacity and production of maple, beech and birch flooring, which we have obtained from non-member manufacturers of the association for the years 1922, 1921, 1920 and 1919. In this chart the non-members are arranged in alphabetical order. We show on the next page how many replies were received. The figures on said tabulation are correct. They have been checked and double checked.

(Said compilation marked Defendants' Exhibit CC-4, and received in evidence.)

"Here is a letter we received from the Peytona Lumber Company, Inc., Huntington, W. Va., that might perhaps shed a little light on the conditions in the maple flooring industry. This is dated September 14, 1923, addressed to George W. Keehn, Secretary, 1045 Stock Exchange Building, Chicago, Ill.:

'DEAR SIR: We have your letter of the 12th and wish to advise that we have not manufactured any flooring for several years, except occasional orders which we have disposed of locally.

We have been using our planing mill equipment for other purposes, as we did not find the flooring business to be profitable.'

Then the letters from other people to whom we wrote stating that they had given up the manufacture of flooring. The Cherry River Boom and Lumber Company, Scranton, Pa., we haven't manufactured any flooring during the time mentioned in your letter, or something to that effect. 'We took out our flooring machines and have gone out of the maple flooring business.'

Another one from Christian Flierl Co., Inc., Buffalo, N. Y., we have discontinued special orders—

Q. I don't think we will go into these letters.

A. There are a number of them like that where they have discontinued.

[fol. 1373] Q. Does that complete this exhibit of manufacturing capacity of members and non-members which we have been discussing?

A. I think that does."

I have prepared tables showing the stumpage owned by members of the Association and compared it with the total stumpage in the United States. The data with respect to the ownership of stumpage owned by members of the Association were procured by said members. According to the estimate that we finally used, derived largely from the Forest Service correspondence, the estimated stand in 1923 of maple, beech and birch stumpage in the United States was 86,000,000 M feet. According to reports received from members of the Association, the maple, beech and birch stumpage owned by them was 1,476,086 M ft. or 1.72 per cent of the total stand.

(Said tables above mentioned were marked Defendants' Exhibit DD and DD-1 and received in evidence.)

I have an average freight rate charge to 30 different points.

(Said freight rate chart marked Defendants' Exhibit EE and was received in evidence.)

"Q. Has there been made by you and under your direction a tabulation showing the actual sales by months made by all of the members of the Association from whom you were able to secure the data of 13/16 by 2 1/4 inch face maple flooring delivered in the representative markets, the larger markets of the United States?

A. Yes, sir.

[fol. 1374] This sheet is inserted as the reminder that there were two exhibits in the course of Mr. Keehn's testimony that did not appear to be numbered or show where they were introduced.

[fol. 1375] Q. How was this made up, from what data?

A. We requested the members of the Association to send us a statement showing the delivered prices obtained during different months and during different years for clear, number one and factory, 13/16ths by 2 1/4 inch face maple flooring so that we could compare like with like, that is, if each member sent in a report of the selling prices he obtained. For example, in the Boston market or the Chicago market in the month of January, 1922, then we would make

a tabulation all the way down showing all the reports that the different members made on that fact. Then the work became so voluminous and such a vast amount of detail that we were finally able to concentrate only on the year 1922 because in order to make a substantial showing and substantiate our statistics by cold facts and not theories we requested the members to send us the original orders showing the date when they were taken and in many cases the duplicate invoices. So this has been worked out as complete as it was possible to do it with so many people and in a short time since we undertook this work, and we have at the hotel a very large bulk of original orders and invoices and things like that to substantiate these statements which we will be glad to produce if desired.

Q. Those invoices have been checked against this statement by the same men who have been working for you for a good many years and are experienced in the preparation of figures of this kind?

A. Yes.

Q. And we have all of those original invoices to support this statement?

A. Yes. Some of these representative markets there were so few [fol. 1376] sales made, for instance, we might say Atlanta, Ga. or some remote point where we couldn't make any comparison, so the ones we have selected here and the others are available if anybody wants them are Boston, Buffalo, N. Y., Chicago, Ill., Cleveland, Ohio, Detroit, Michigan, Los Angeles, Calif., Minneapolis, Minn., New York, N. Y., Philadelphia, Pa., Pittsburgh, Pa., and then some scattering ones in other towns where there are not enough sales to afford a very good basis of comparison. I might say that the members sent this in some time ago, made up sheets and sent them in to us and we found out afterwards by correspondence with them that instead of giving the date of the order they gave the time of shipment, while some other member would give the date of the order without regard to the time of shipment. For example, one member would sell a very large quantity of flooring in January to be shipped during the year and when he invoiced that stuff out in December he would have the January price. On the other hand, another member would have his December price, so we couldn't make any comparison, for that reason we have gone over and corrected these sheets as well as we could on the basis of the original orders which the members have supplied. We have a little memorandum here in explanation of these entries which I will give to his Honor with the carbon.

Statement of delivered selling prices obtained in thirty representative markets by members of the Maple Flooring Manufacturers Association, year 1922; all prices checked have been verified by comparison with prices on original orders and invoices which will be submitted as supporting data.

[fol. 1377] 2. All prices circled are without supporting orders or invoices but they were included in members' reports of delivered selling prices obtained in the thirty representative markets.

3. Members No. 2, 4, 34, 47 and 50 did not find time to select from their records their orders and invoices supporting their statements of delivered selling prices obtained.

The Witness: Shall we separate and give eight or ten as typical markets or do you want them all?

Q. Just the large markets. I take it where you have the members reports you put in all of the sales, you have left none out?

A. Whatever they sent to us, we have entered here.

Q. These reports represent the delivered prices in the respective markets?

A. Statement of delivered selling prices obtained by members of M. F. M. A. for 13/16ths inch by 2¼ inch face clear, number one and factory maple flooring delivered f. o. b. cars in the following representative markets—how many more do you want?

Q. Have we got all of the large markets now?

A. There are not many sales to St. Louis or Salt Lake City or Des Moines, we might as well give them all if you want them.

Mr. Johnston: We offer this exhibit in evidence as the next exhibit number and ask that it be so marked.

(Marked Ex. FF to FF-9 inc.)

The Witness: Suppose we find out about this supporting data, does the Government want them or doesn't it, the invoices—there might be a trunkful of them.

[fol. 1378] Mr. Fowler: We would never take time to look them over.

The Court: I can assure you that the Court won't read it.

Mr. Johnston: We merely want to show that we have them, your Honor.

Q. Have you also made a tabulation taken from your records of all f. o. b. mill prices?

A. Yes, sir.

Q. Which have been reported to you by members of the Association from time to time?

A. I was just about to answer. We have here a statement of all f. o. b. mill sales during the year 1922 which were made by the members of the Maple Flooring Manufacturers Association and which were reported to us by them and which we in turn included in the weekly sales reports during the year 1922, complete files of which I think the Department of Justice has.

Q. Those have been introduced in evidence, have they not?

A. Some of them may have been, I am not sure whether all of them were introduced or not, I think likely. This statement which we have here starts out with the year 1922, shows every f. o. b. mill price where the flooring was sold f. o. b. flooring mills. During the months of January to December inclusive 13/16ths x 2¼ inch face clear, number one and factory maple flooring standard grades and lengths clear, number one and factory. In this report we have indicated the identity of the member of the Association who made the sale by recording his Association membership number in red ink above the price. During January, February and March, 1922, identifying numbers of members who reported their sales were not [fol. 1379] disclosed in our weekly record of completed transactions

from which all the f. o. b. mill selling prices given on this statement were compiled. During that period of time no identifying numbers appear upon the weekly sales reports. Now we come to the other months beyond that and if you would like to pick out any particular month we will read the prices as to clear, number one and factory.

Q. I will ask you generally whether that tabulation of all f. o. b. mill prices reported to you by members of the Association, shows that at any time during any of those months there was a practical uniformity in those f. o. b. prices?

A. It proves the contrary, there are wide variations at all times. In some cases some price appears but very frequently or in nearly all cases that sale was made by the same member of the Association, for instance, in listing of the sales you might find a certain price would appear four or five times, take for instance the factory flooring for the month of May, 1922. We have a price here of \$20.00, \$20.00, \$20.00; those three sales were made by No. 47.

Q. That is sufficiently identified from the exhibit itself, is it not, by looking at the number?

A. Yes, and we also have to support this statement of the weekly sales reports for the year 1922—there might be one or two of them missing, I don't know.

Mr. Johnston: It isn't necessary to reintroduce this.

The Court: There seems to be a variation of from one to three dollars by the same member?

[fol. 1380] A. Yes, members frequently vary their own prices during the month.

Mr. Johnston: We offer this in evidence as the next exhibit of the defendants. It will not be necessary to put those ink sales reports in evidence, they have already gone in by the Government.

(Paper referred to marked Def. Ex. GG and received in evidence.)

The Witness: It is correct to the best of our knowledge and belief, it has been checked back twice, there might be clerical errors in it, if there are any clerical errors in it, they could be corrected on the basis of these reports.

Q. Did you in the preparation of the files of this case request the members of this Association to submit to you their statements showing their profit and loss in the operation of their flooring mill?

The Witness: Pardon me, here is another that really goes with this.

Q. What is that?

A. That is Range of selling prices f. o. b. mills, the high and low price obtained by months, each grade of 13/16ths by 2¼" face from the year 1913 to the year 1922 inclusive. These statements were compiled from the reports issued to the members of the Association of current net values we called it at one time, Average Prices realized, etc., which are compiled and sent out each month with our monthly statistical report.

Q. This statement shows the range, does it, by showing the high and low for each month?

[fol. 1381] A. Yes sir, it shows the range by giving the high and low for each month. It is an extra set, I thought they might like to have it. The high and low each month, each grade from 1913, September up to December 1922, the range clear, number one and factory, that is, the high and low eastern lower Michigan mills, western lower Michigan mills, upper Michigan and Wisconsin mills, then all Michigan and Wisconsin mills. That has been checked back very carefully and compared and we have the monthly reports to support it and of course the monthly report shows many variations in prices between the high and the low; in other words, it is really a statement of cold facts rather than theories.

Mr. Johnston: We don't need those monthly reports I believe.

A. If you would like to have them, this is what actually happened.

Mr. Johnston: They have been put in evidence.

A. We could take out any one particular month, we could take March, 1922, we could take March 1920 and explain the spreads in prices that occurred during those months, and we also have a chart but I think that is in the economic defense exhibit.

Mr. Johnston: I will make reference to that later. There is just one of these sets, it isn't necessary to introduce two.

A. Oh no, I just gave you two.

Mr. Johnston: We will offer this exhibit in evidence, ask that it be marked the next exhibit number.

(Said document marked defendants' Exhibit H H, and received in evidence.)

The Witness: For example, the chart I speak of has attached to it in my file here the record of average prices realized in February and March 1920 for clear, number one and factory maple flooring by the different members located geographically and the total and the same thing in March and February 1922 showing very wide variations in prices, the difference being as high as 65% from the [fol. 1382] low price to the high price.

Q. You are now making reference to the chart which we prepared from the March 1920, February 1920, March 1922, February 1922 and August 1922 figures?

A. Yes, with a write-up of what actually happened in reference to the spreads and also the supporting statements that give it, those two months, I take it you don't want these.

Mr. Johnston: No, we will not need the monthly reports unless counsel wants them. We offer this chart showing comparison of f. o. b. mill prices together with the explanatory statement attached thereto and the record of average prices realized and ask that it be marked the next exhibit number.

Q. Will you explain briefly the nature of that chart, just what it shows?

A. This is a comparison of f. o. b. mill prices realized by reporting members of the Maple Flooring Manufacturers Association showing the lack of uniformity as we term it clear, number one and factory; the prices obtained in March 1920 for the clear, March 1920 for the number one and February 1920 for the factory. The reason we took February 1920 for the factory instead of March is because there was only one sale made in one group of factory flooring during the month of March and there was no way of comparing it. This scale is drawn on dollars and cents basis I would say, the prices obtained for clear, in March 1920 by the mills in eastern lower Michigan being members 2, 24, 33 and 49 are shown; then in western lower Michigan are shown; upper Michigan and Wisconsin, that appears all the way through, the same method of comparison is made for March 1922, February 1922, I don't know what that other date was, I think August 1922. I think this is an old chart which is incorrect, that you have in the economic defense. I think we afterwards took March 1922 all the way through you know instead [fol. 1383] of using March 1922, February 1922 and August 1922, so this ought not to go in.

Mr. Johnston: The correct chart appears then as one of the exhibits to Mr. Grant Keehn's and Mr. Gordon's deposition?

A. Yes, it does, the Barr chart they call it. We have the corrected chart here, may we withdraw that so as not to clutter up the record.

Mr. Johnston: That is Ex. No. 28, is it not?

A. Exhibit 28, yes.

Q. Attached to the deposition of Gordon and Keehn?

A. Yes.

Q. That shows that on the lower half of the chart March 1922 was used in each case.

A. Yes, March 1922 is used in all cases and the upper part of the chart March 1920 is used for the clear, number one and February 1920 is used for the factory.

Mr. Johnston: We will withdraw this chart and offer only the explanatory statement of it and make reference to exhibit No. 28 attached to the exhibit of Grant Keehn and Edward V. Gordon as being the correct chart.

The Witness: Then pardon me, do you wish to leave this in to go with the chart?

Mr. Johnston: Yes, they are explanatory with the rest of the exhibits here. Mark them the same exhibit number you have here.

(Papers marked Def. Ex. II-1 and II-2 and received in evidence.)

Q. Will you go to the subject that I started to inquire about, namely the profit and loss of the members of the Association in the operation of their flooring mills. Did you request members [fol. 1384] of the Association to submit that data to you?

A. Yes sir, we did. We sent a request to all members of the Association to give us a statement of their hardwood flooring profit and loss accounts beginning with 1913 and coming up to 1922 in-

clusive and we used as a sample of the form of questionnaire a statement of profit and loss account as used by the I. Stephenson Company Trustees but we told them to make it up according to their books and records, and to have it as accurate as possible but to contain whatever elements were recognized as a part of that business, so as a result of that—

Q. Just a moment. Were many of the members willing to submit their profit and loss statement?

A. I think most of them were willing to do it. Some were not willing to do it and some of them said it was impossible for them to segregate their hardwood flooring business from the rest of their business, that things were so interwoven and intermingled, it wasn't possible to do it, they didn't keep their books that way. So as a result of that—

Q. How many did you get?

A. As a result of that we got the following—pardon me, as a result of that we got reports from the following members of the Association and we have consolidated them into one statement thinking perhaps it would not be necessary to give the individual profits of any individual member.

Q. You have those however?

A. We have those however, yes.

Q. In your file and with you?

A. So their reports were consolidated, I, Stephenson Company Trustees 1913-1922 inclusive; Osgood and Blodgett Manufacturing Company 1913-1922 inclusive. I think that may include some of [fol. 1385] their oak flooring, I am not certain about that, but my recollection is that their oak flooring embraced about 25 or 30 per cent of their hardwood flooring company business. A man selling maple flooring could not of course separate where their profit was on any particular item. West Michigan Flooring Company 1913-1922; J. W. Wells Lumber Company 1913-1921; and January, August 1922, their fiscal year ending September 1st instead of the end of the year, they having changed it.

Northwestern Cooperage and Lumber Company, 1913-1922, Grand Rapids Trust Co., Receiver for Wm. Horner, for the year 1922 only. That embraces what we call two members who own their own stumpage, two members who purchase their raw material on the open market, three members who own their own stumpage, pardon me, all of them sometimes purchase on the open market; two of them purchase exclusively their rough maple lumber on the open market and one who does both. I think the Grand Rapids Trust Company Receiver for William Horner have stumpage, I think also buy a large amount on the open market.

Q. Did you consider those who have submitted the data to you as representative of the members of this Association?

A. I think they really represent the different elements and types of membership in the Association.

Q. You have tabulated all that you have received?

A. I have tabulated all that I have received. This is headed

Profit and Loss Statements covering a period of years submitted by six members of the defendant Maple Flooring Manufacturers Association. In the first column we have the year, beginning with 1913 and running down to 1922 inclusive. In the next column we have the net sales.

In the next column we have the net profit or loss, the loss being [fol. 1386] in red.

The next column we have the per cent of profit on the sales.

Here is the consolidation reading it crosswise:

1913 the sales are \$1,223,050.92.

The net profit is -98,931.60.

Per cent 8.09.

1914 the sales are \$1,146,916.32.

-65,257.03.

Percent of profit 5.69 per cent.

1915, \$1,092,459.73.

Profit \$71,267.40.

Per cent of profit 6.52 per cent.

1916, \$1,126,502.50.

Profit \$46,889.29.

Per cent 4.16 per cent.

1917, \$1,000,912.43.

Profit \$67,005.27.

Per cent 6.69.

1918, \$717,010.28.

Loss \$30,414.49.

Per cent of loss on the sales 4.24 per cent.

1919, \$1,563,021.84.

Profit \$61,379.36.

3.93 per cent.

1920, \$1,989,419.01.

Profit -393,919.42.

19.81 per cent. That was a runaway market.

1921, \$1,269,178.09.

[fol. 1387] Loss \$39,687.62.

Per cent of loss to sales 3.13 per cent.

1922, \$3,785,925.48.

Profit, \$431,134.75.

Per cent of profit 11.39.

Totals \$14,914,396.60 of sales.

Profit \$1,165,682.01.

Per cent of profit on sales 7.82 per cent.

Q. That 7.82 in other words, is the average for that ten year period?

A. Yes.

Q. Have you here the individual profit and loss statements which you can submit to the Court which we prefer not to make a part of the record. We have no objection to counsel looking at them, they

are accessible to you and also to the court if you desire to look at the individual statements.

Mr. Johnston: I offer that as an exhibit.

(Marked Def. Ex. JJ and received in evidence.)

A. The names of the six companies are on this sheet. I might say in reference to one statement of profit and loss one of the larger companies, that for the years 1920, 1921 and 1922 they did not include administrative expense, selling expense nor interest because that was charged into their general business.

Q. Thy made up their profit and loss though including those as deductions?

A. From the hardwood flooring department.

Mr. Fowler: That tabulation doesn't show anything about the amount of capital these concerns had invested?

A. No sir, it does not. The amount of capital they have invested might not be applicable to the hardwood flooring business anyway.

[fol. 1388] Q. On or about April 1922 you testified the other day that you had some correspondence with the Department of Commerce, Bureau of Census, regarding the submission of the data and reports sent by your Association to its members to various public agencies?

A. Yes, sir.

Q. I will ask you now whether there is the slightest objection on your part of the members of this Association to the widest distribution of all of the data sent to members, to any source that is willing to receive it?

A. No objections whatever.

Q. Are you and have you been perfectly willing that the trade papers should publish every statistical report, weekly, monthly, quarterly, semi-annually, or annually or whatever it may be that your Association puts out?

A. We are willing to have them do so.

Q. You have furnished them with everything that they would publish, they were willing to publish as news?

A. We furnish them the same material that the Department of Commerce, Bureau of the Census elected to publish in the survey of current business and we have told them about this other statistical data but none of them have ever asked for it. We frequently send them quarterly reports and things like that every week now and have been for some time, the average prices realized.

Q. From the sales from the weekly sales reports?

A. From the weekly sales report.

Q. Have you and have you had any objection to the full publication of everything which your office sends out to the members in these weekly or monthly publications or in any other source that will provide distribution of that data?

[fol. 389] A. We have no objection so far as I know either on my part or on the part of any of the members of the Association, we have had this up several times at Association meetings. They have

always told me to give the Lumber Trade Papers whatever information they wanted, to give the Department of Commerce, Bureau of the Census whatever information they wanted. We have certainly filed volumes of this stuff with the Federal Trade Commission and the Department of Justice at different times.

Q. I am talking now particularly to the distribution of these statistics through publications which will reach the public generally or at least that portion of the public which subscribes to and reads the trade papers.

A. Yes, we would be willing to do that. As far as that is concerned, if it should be thought that more of our statistical data should be published we would be willing to have it published in any trade paper which the Court might select, like the American Lumberman, and we would pay for it as an advertisement if the publication is not willing to accept it as news items.

Q. In other words, the publications are not interested in a great deal of this data?

A. It is too voluminous, it is too inconsequential. For instance, see how much space it would take to publish our weekly sales reports and all of these statistical reports, it would take about as many pages of the American Lumberman, as our reports consist of, ten or twelve pages sometimes.

Q. But they do publish and have been for some time publishing or averaging those?

A. They publish the Barometer and they publish the stock conditions from time to time. You will find that in the American Lumberman and other papers and they also publish the prices which [fol. 1390] we send them not only in the lumber trade papers, we also send them to the Chicago Journal of Commerce which is a financial paper published in Chicago.

Q. This letter of April 19, 1922, I think you read that before, did you not?

A. No, I think not. After my return from Washington, I wrote the Department of Commerce, Bureau of the Census, a letter on April 25, outlining what we proposed to do. I don't think it was read. Then they replied on May 5, 1922.

Mr. Johnston: We will put that in evidence if it has not been.

The Witness: There is one thing I would like to call attention to about our normal capacity, productive capacity.

Q. What have you to say on that subject?

A. On May 13, 192, this is simply an extract from the letter to the attention of Dr. Frank M. Surface, Special Agent of the Department of Commerce, Bureau of the Census, regarding the approximate percentage of the maple flooring industry which is covered by our reports, it is our impression that our Association represents about 70% of the output. We of course have no data regarding the output of non-member mills, so we have no means of knowing what the total production of maple flooring is in the United States, so our

estimate of approximately 70% is based upon general information only.

Then at his request we started out to collect data regarding the normal manufacturing capacity of the members of the Association and here is a questionnaire which we sent to all the members June 9, 1922, on that subject, and here is a typical reply, like the I. Stephenson Company where they said they estimated their normal capacity 700,000 feet per month and 8 million 400 thousand feet per year for 25 days running per month, 300 days running per year and ten hours' run per day. Then we tabulated that in a letter of July 20th, 1922, addressed to Dr. Frank M. Surface, Special Agent and etc., where we gave them the data regarding 20 mills one million capacity per year, 146,400 M per month; 12,200 M; average days' run per year 281 days. Average working hours per day 9.8 hours; and then regarding the 22 members which was our total membership at that time, normal capacity per year 158,400 M; per month 13,200 M. Average days run per year 181 days. Average working hours per day 9.8 hours; so the other two members did not affect anything but the capacity.

Mr. Johnston: We will offer that group of correspondence in evidence and ask it be marked the next exhibit number.

(Def. Ex. KK, KK-1 to KK-5 and received in evidence.)

Q. Under your articles of Association, taking the operation of your thereunder, is any manufacturer of maple, beech or birch flooring in the United States eligible to membership?

A. Every manufacturer of maple, beech or birch flooring in the United States is eligible to membership, no requirements as to capacity, volume or anything else.

Q. You have never attempted to exclude or refuse membership in this Association—

A. No, on the contrary, we have tried to get them in so as to have our statistics more complete.

Q. You have I believe an example taken from the files of the [fol. 1392] Oval Wood Dish Company which was given back to you by Mr. Thompson, of the practical application made by members of the average cost chart showing the average cost of the manufacturers of the product and the various elements of that cost?

A. Yes, sir.

Q. What are those papers which you have?

A. I might say in this connection that a number of the members of the Association have testified they have made a careful comparison of their own costs with the average costs submitted through our office of the manufacturing and marketing of maple, beech and birch flooring, and it so happens that three test runs which were made in 1921 by the North Branch Flooring Company of Chicago and the average manufacturing and marketing cost for the first quarter of 1922, were used in those manufacturing and marketing costs for the first quarter of 1922, we itemized the averages of the replies received on the basis of the questionnaire which we will show.

Then the Oval Wood Dish Company apparently received that and they made a very careful analysis of their own costs by items compared with the averages reported by the Association. They have here you know later taking lumber off of docks, etc. and to dry kilns, that means also to car pile and etc., the average reported \$1.16; their average 1.04.

Cost of manufacturing including supplies in our questionnaire, the warehouse expense is included in that, our total 92 cents, their total 10.71.

Insurance and taxes 1.07; theirs 61 cents.

Interest 1.92; theirs \$1.86.

Selling expense and cash discount we have not separated in our [fol. 1393] statement. The total is 4.55; theirs was 6.05.

Depreciation, ours is calculated at 1.37; theirs at 1.60.

Then the total per M feet, our 19.31; theirs 21.87.

Q. That is they were several dollars higher?

A. Yes. Then less amount received for waste material, that is wood and other little stuff that you couldn't sell, had to get rid of, 1.32 and theirs 65 cents.

Net cost 17.99 by our tabulation, \$21.22 by theirs.

Q. What did the Oval Wood Dish do then in its next quarter after having this basis of comparison?

A. They appeared to have made a study of it and they appear to have reduced their manufacturing and marketing cost as the result of this information. Without reading the items all over again, the first item is a dollar in their statement dated June 17th.

Q. That is three months later?

A. Three months later. The next item—pardon me, I might read theirs anyway.

Q. Yes.

A. Their previous 1.04, this time \$1.00. The next item 10.71, June 10.33. The next item 61 cents, 68 cents.

The next item 1.86; 1.76.

The next item 6.05; 2.98.

The next item 1.60; June 17th 1.52.

Their first total 21.87, their second total 18.27. The wood the same in both cases, 65 cents, leaving the net cost the first time \$21.22, the second time \$17.62.

The Court: Nearly the whole of that is in the one item?

[fol. 1394] A. In the selling expense, yes, sir. \$3.60 reduction.

Q. It shows an effort, does it not, on the part of this member taking it as an example, to use that data supplied by the Association as to the average marketing cost for the purpose of correcting his own cost and bringing down the high items in his cost of production?

A. Yes, to analyze the costs and increase the efficiency in some branch of manufacture where he apparently has been lame in his efficiency.

Mr. Johnston: We will offer this exhibit in evidence and ask that it be marked the next exhibit number.

(Said document marked Def. Ex. LL and received in evidence.)

Q. You have made reference in your examination for the Government on behalf of the Government to the basis upon which you originally determined the elements to be taken into consideration in the manufacturing cost of maple flooring?

A. Yes, sir.

Q. From what source did you obtain this information which formed the basis of your original estimation or determination of these cost items and of the divisions that were to be made to the cost of manufacture.

A. What we call our survey of costs, manufacturing and marketing costs was developed quite a number of years ago and later on it was substantiated as a practical foundation for those elements of cost by Prospectus which we received from the U. S. Forestry regarding the sale of timber in Priest River Valley, Idaho. We have a letter here dated March 10, 1913, addressed to the Maple Flooring Mfg. Association and signed by H. S. Graves.

Q. Who is Mr. Graves, do you know?

[fol. 1395] A. The forester, United States Forester. In which they endeavored to arrive at a basis for the sale of their stumpage. The letter is rather short, perhaps it wouldn't take very long to read it. It tells the whole story instead of extracts.

United States Department of Agriculture

Forest Service

Washington, March 10, 1913.

Secretary Maple Flooring Mfg. Ass'n, 807 Stock Exchange Building, Chicago, Ill.

DEAR SIR: Because of the proposed sale of 267,000,000 board feet of timber in the Priest River Valley, Kaniksu National Forest, Idaho, the inclosed prospectus has been prepared. It shows how the forest service furnishes information to lumbermen who might be interested in bidding on National forest timber.

An unusual feature of this sale is the fact that on part of the area the forest will be destroyed. The object will be to clear this part of the area for agriculture instead of providing for forest renewal. Provision 8 of the "Sample Timber Sale Contract" and the provision regarding "Agricultural Land" under the head "Rules for Marking and Brush Disposal" illustrates how this will be done.

When the area has been cleared of timber and the slash burned the land will be opened to homesteading under the provisions of the "Forest Homestead Law." If the Forest Service did not sell off the timber before opening the land to entry, the value of the present stand of timber would cause the land to be held speculatively instead of being cleared for farms. But the land will be better employed growing farm crops than growing timber; and hence the Forest [fol. 1396] Service is preparing to put it into the hands of bona

fide settlers, under a procedure which will insure agricultural development.

The Federal Government will receive about \$659,000 for the timber, of which \$225,000. will go to the benefit of the state for public schools and good roads.

The minimum stumpage price of \$5 specified for the white pine on these logging chances is unusually high, because this western white pine is the most valuable stumpage on the National forests. The timber is easily worth the price, and no difficulty is anticipated in securing bids on the basis named.

The 12 per cent profit to the lumbermen allowed for in calculating the stumpage rates to be charged is exclusive of interest on the investment, which was figured at 6%.

The minimum prices allow, therefore, for a profit of 12% on every thousand feet of timber sold, over and above interest on capital and all overhead costs. It must be remembered that the manufacture of lumber is a business which, because of the risks involved, requires a high return in order to induce operators to undertake a logging enterprise.

Very truly yours, H. S. Graves, Forester.

Now on page 5 of this prospectus there are certain elements we will consider in the cost of logging and manufacturing, and etc. There is no use to read them all in detail, but among the ones which are similar fundamentally to what we use, the Association uses "Administration and Supervision, depreciation of equipment, interest charges, taxes and insurance." That is all summed up as to certain chances there.

[fol. 1397] Then we come to another one on page 6: "Administration, supervision, sealing excepted, and railway operation, maintenance of way, unloading at pond—those are just items again—interest charges, depreciation of equipment, insurance and taxes. Then they deduct for salvage and etc.

Then we come over to page 7: "The stumpage rates appraised in the notice of sale were determined by deducting the cost of logging, milling and other expenses, plus approximately 12 per cent profit, from the present average selling prices of lumber."

Then they go on and give the stumpage prices. In other words, they appear to have taken the market value of lumber as realized from sales on the market as the foundation for arriving at the selling price of the timber. In other words, they work from there back to the stump and with us we take the market value of the rough maple lumber as ascertained by sales on the open market and we work from that foundation to arrive at the average cost of the finished flooring. It is the same fundamental principle but it is reversed in its application.

Mr. Johnston: We offer this letter and prospectus in evidence and ask it to be marked the next exhibit.

(Marked Def. Ex. MM and received in evidence.)

There are one or two questions which I should have covered on cross examination that I want to ask you. One is this:

Q. Referring to a typical set of exhibits, I am taking now those which are marked Gov. Ex. 40, and having particular reference to the percentage items which are shown on those exhibits, in order that that may be cleared up for the record, we ask you on what basis you arrive at those percentages.

[fol. 1398] A. They are statistical reports of corresponding membership for certain years. It is very simple, we can explain in in a second, I was trying to analyze about percentages.

For example, the average stocks on hand during 1912 in this statement were 36 million 619 thousand. The average stocks on hand in 1913 were 32 million 746 thousand. That shows a decrease of 3 million 873 thousand or 10.6 per cent which is arrived at by dividing 36 million 619 thousand into 3873. In other words, the year 1912 is the base.

The same price to the unfilled orders. That shows the average in 1912 was 24 million 576 thousand, 1913, 25 million 023 thousand, an increase of 447 thousand or 1.8 per cent. The shipments the same way, 1912, 176 million 791. 1913, 172 million 889. The decrease is 3 million 902 thousand or 2.25 per cent.

The production 160 million 244 thousand, in 1912. It is the same principle all the way through.

Q. In other words, the principle upon which those percentages are prepared is sufficiently clear, is it, from each exhibit?

A. Just a mathematical calculation, that is all.

Q. Taken from the figures which are on the exhibit itself?

A. Yes.

Q. And where there are comparisons with prior years comparing them on a percentage basis?

A. Yes.

Q. Those percentages in other words don't have any meaning other than as they are comparison of the figures themselves as they are shown upon the exhibits?

A. That is the only significance they have, the only significance they could have.

[fol. 1399] Q. In order that there may be no confusion, in your answer to the last question preceding this, you said that your method was the reverse of that adopted by the Forestry Service. Of course your present method of ascertaining costs does not involve any element of profit?

A. No, it doesn't involve any element of profit.

Q. And no element of profit is added in. There was reference made in some of the exhibits introduced by the Government to the suggestion made by some members or some committee that efforts be made to ascertain the L. C. L.—I take it that means "less than carload" shipments of maple lumber?

A. Yes.

Q. Was anything ever done about making such a survey of costs?

A. No, nothing ever happened in that respect. Some of the mem-

bers, only a few of them—well, perhaps quite a number of them at times sell less than carload lots of flooring, we call it L. C. L. For example, might haul it from their factory to the freight house in the City in which they are located, then they load it into cars, some are just delivered to the freight house, and I think one or two of the members thought we ought to make a survey as to what the average cost of handling that kind of business was but nothing was ever done in regard to it.

Q. No such survey was ever made?

A. No such survey was ever made and no report was ever made by this Committee on cost surveys. Pardon me, coming back to this cost business again, we have had a very great correspondence with Mr. Edward N. Hurley when he was Chairman and Vice Chairman of the Federal Trade Commission about industry study and its costs, and etc. but stating how they should do that in order to have [fol. 1400] some foundation for their selling prices and etc. Some of it was a personal correspondence. For example, he made quite a lengthy address before the Boston Commercial Club in March 1916. We had it reprinted. Mr. Hurley was very much pleased with us for having done so, he wanted us to supply him with 80 copies which we did and we gave it quite wide circulation.

Q. That is relating to the ascertainment by industries of their costs of manufacture?

A. Yes and how disastrous it is not to keep any track of those things.

Q. There were references made by Mr. Fowler to the fact that statistics of weekly sales were not sent out prior to January 21, there were weekly reports of weekly sales during 1920?

A. I think my memory was at fault there, it wasn't very clear at the time. I think I said that according to my recollection weekly sales reports were made in 1920 and that was prior to the time of the celebrated Nebecker correspondence.

Q. All statistical data was suspended for a time in 1920?

A. Yes, all statistical data was suspended for four months I think between April and August.

The Court: That was immediately following the decision of the lower Court—

A. In the Memphis case, in 1920, and I think if we look at our reports we will find some of our statistical reports were made not out until August.

Q. You didn't make out any of the weekly reports at all?

A. No, we didn't pick those up again because that would be like buying old newspapers four or five months old.

Q. Is there anything else there that you have? In order that we [fol. 1401] may be sure that there is in the record one of these recent average cost charts based upon composite result in five test runs, we would like to offer this cost chart.

(Paper referred to marked Def. Ex. NN and received in evidence.)

Mr. Johnston: I think that is all.

Mr. Fowler: I wish the record to show that L. S. Morse of Jeff-

ersonville, Vermont, is on the list, but has not reported to either of the parties, either the Government or the defendants.

Billings Lumber Company, Belvedere Center, Vermont, was on the list of manufacturers, has not reported to either the Government or the defendants, but that C. R. Phillips Company, North Tonowando, N. Y. as manufacturers——

Mr. Johnston: Are they on our list?

Mr. Fowler: No, you said a while ago they were not on your list, the one that you prepared.

The Witness: I think his Honor said they were not on our list.

Mr. Fowler: I don't care to ask him any questions.

Mr. Johnston: The defendants now offer in evidence the publication entitled "Trade Association Activities, published by the United States Department of Commerce and printed by the Government Printing Office in 1923, being the Department of Commerce publication under the general heading of Elimination of Waste Series. I don't care to have the publication copied of course but I desire to read a few excerpts from it and have them in the record so that either counsel may refer to them if they desire.

The Court: I suggest that you specify the pages of the report to which you call particular attention."

Mr. Johnston thereupon called the court's attention to pages 2, 3, 4, 7, 13, 14, 21, 22, 23 and 24.

(Said document was marked Def. Ex. NN-1 and received in evidence.)

[fol. 1402] Mr. Fowler: We wish to have an objection noted on the ground it is wholly immaterial.

The Court: It will be received subject to the objection.

Mr. Johnston: I will just read a few portions from it. The first is from the Foreword on the first page (reading) Reads from page- 2, 3, and 4, also summary at the end of this article, page 7. On page 13 under the heading of Production Statistics, and on page 14.

Mr. Fowler: I would like to inquire whether that is being read as evidence or an argument.

Mr. Johnston: It is being read as the production of a Department of the Government which has to do directly with trade Associations.

Mr. Fowler: But not with the enforcement of the law.

Mr. Johnston: Maybe not with the enforcement of the law, nevertheless, it is from the same Department in which a portion of the statistical data is presented by the Government. (Reading from page 21, "Special Statistics." also page 22, page 23 and page 24.)

The Court: Really, Mr. Johnston, can this be of very much value?

Mr. Johnston: I think so.

The Court: In a decision of a case of this kind if these matters are desirable the remedy lies with Congress and not with the Courts.

Mr. Johnston: I think when you are considering it was signed by Mr. Hoover——

Mr. Fowler: It wasn't written by Mr. Hoover.

Mr. Johnston: In fact I have some of his letters in here which I would like to read, there can't be much doubt about those.

The Court: There isn't any doubt in the world but what eminent men and men who are capable of forming opinions differ as to the [fol. 1403] wisdom of the Sherman Anti-Trust Act and differ also as to what is prohibited and what is not prohibited, but matters of that kind are not very valuable in the decision of a case like this one.

Mr. Johnston: Let me state to the Court why I think they are valuable, in what respect they are valuable. This Court is a chancellor, sitting in chancery, it is his discretion under this Act as I construe it, and I construe the authorities, to enter the sort of a decree which the facts in this case justify.

The Court: Governed entirely by the rules of law.

Mr. Johnston: Certainly, of course a chancellor doesn't in that respect sit in any different situation than he does sitting in a court of law, but when he is framing a decree to cover a situation of this kind, one of the things which he must of necessity take into consideration in determining whether or not a particular thing which is done by the defendant association is in violation of the Act, is to determine the aspect of that thing in its relation to the industry as a whole because, unless that view is taken, it is impossible to get the proper perspective upon, let us say, the subject of the distribution of trade statistics.

The Court: Of course, if this were a matter addressed to the legislative branch of the Government, it would be highly important, but as addressed to the court for the decision of a particular case, involving specific matters, to my mind, it is of very little importance.

Mr. Johnston: It seems to me to be very important, your Honor.

Mr. Fowler: I wish to call the court's attention to one statement in it, which shows the source of this matter:

[fol. 1404] "This investigation, undertaken jointly by the Bureau of the Census, Bureau of Foreign and Domestic Commerce, and Bureau of Standards, was guided and supervised by the following committee, representing the many phases of trade association activity and allied interest:

F. M. Felker, Chairman, Department of Commerce.

Hugh P. Baker, American Paper and Pulp Association.

Carl Hunt, Associated Advertising Club of the World.

E. W. McCullough, Chamber of Commerce of the United States.

S. L. Nicholson, Electrical Manufacturers' Council.

James O'Shaughnessy, American Association of Advertising Agencies.

L. B. Palmer, American Newspaper Publishers Association.

Alfred Reeves, National Automobile Chamber of Commerce.

O. B. Towne, Waxed Paper Manufacturers Association (secretary American Trade Association, Executives).

Nathan B. Williams, National Association of Manufacturers.

L. E. Warford, Secretary to the Committee.

[fol. 1405] "A. We prepared an index of wages showing 1913 as one hundred per cent, extending from the year 1912 to a part of the year 1923, inclusive, and some of the members referred to

this in their testimony and their statements were handed into the court. In this particular case, you know, we have reports from thirteen members of the Association, and they have made a report of the daily wages of four classes of workmen:

Labor costs per M feet of flooring;
 Labor costs per M feet of flooring;
 Daily wages thirty-two classes of workmen;
 Daily wages six classes of workmen;
 Hourly wage—classes of workmen;
 Labor cost per M feet of flooring;
 Daily wage eight classes of workmen;
 Daily wages sixteen classes of workmen;
 Daily wages eleven classes of workmen;
 Daily wages twenty-nine classes of workmen;
 Daily wages seven classes of workmen;
 Daily wages of ten classes of workmen.

In all cases the same basis was used by the same member in each year, and we have extended that across, and using thirteen as a base, we found that the average of the percentages, 1909 is 99%; 1913, 100%, 1914, 102%; 1915, 99%; 1916, 108%; 1917, 124%; 1918, 151%; 1919, 190%; 1920, 249%; 1921, 205%; 1922, 184%; a part of 1923 from some of them 154%, using the year nineteen thirteen as a base.

Mr. Johnston: We offer in evidence this index and ask that it be marked with the next letter.

(Paper referred to marked defendant's exhibit 00 and received in evidence.)

[fol. 1406] The Court: That is quite interesting in this, that the curve from 1920 to 1921 corresponds with the other reductions, but from 1921 to 1923 inclusive, it seems to be the reverse of the other curves.

A. Yes, sir.

The Court: In other words, the curve here is downward from 1921 to 1923 instead of upward.

A. (Continuing:) Then we requested the members of the Association who buy rough Maple flooring lumber on the open market to send us a statement of their purchases during the various years, and of the grades, etc., and we have put that on an index basis, using 1913 as a 100%, and in the first column it shows the rough Maple flooring lumber purchased, by grades, during certain years. Of course, the grading of Maple flooring has changed somewhat, as everyone knows who is familiar with the business, and other grades have been injected into it, and it has been more highly classified.

We found, using 1913 as the basis, the index per cent of the average price of the rough Maple flooring lumber purchased in 1912, and reported to us by these various members of the Association, stood at 92%. In 1913, it stood at 100%; in 1914, 97%; in

1915, 90%; 1916, 96%; 1917, 125%; 1918, 149%; 1919, 191%; 1920, 358%. You will observe in that column that in some cases for the grade of lumber used that year as compared with the 1913 base of 100%, one stands at 524, another at 368, another at 488, another at 375; the simple average is 358. 1921, 179%; 1922, 187%; 1923, so far as we were able to get data, 233%.

Mr. Johnston: We will offer this chart in evidence and ask that it be marked with the next exhibit letter.

(Paper referred to was marked defendant's exhibit PP and received in evidence.)

The Court: That curve is closely coincident with the other curves, [fol. 1407] as I remember it?

A. Yes, sir, as I remember it too.

Q. That data for both of these charts which we have just introduced—the tabulations rather, were obtained from the membership of the Association?

A. Yes, sir, and we have the supporting data in case the Government wants it. If we could get back one of those copies at some future time, we would like it, as we intend to have it charted in the same regular way.

Mr. Johnston: That is all, Mr. Keehn, there is one other portion of this Government report that I would like to refer to without reading; that is the historical data contained in the appendix, showing the names of trade associations and the dates of their origin, as showing the age of them, pages 301 to 307 inclusive. Some go way back to the time of the Civil War.

I think the defendant will rest, except that we will put in through Mr. Keehn, after he has consulted the data, the Government has, as to the average percentage of production represented by this Association of the total Maple, Beech and Birch flooring."

[fl. 1408] Thereupon the Government introduced the following evidence in rebuttal:

W. C. HUGHES, a witness called by the Government in its case in chief, resumed the stand and testified as follows:

Direct examination.

By Mr. Thompson:

"Q. Have you prepared certain data with reference to the production of Maple flooring, or Maple, Beech and Birch flooring in the United States?

A. I have.

Q. How was that data secured?

A. In response to an inquiry sent out by the Bureau of Investigation of the Department of Justice, October 29th, 1923.

Q. Will you read that inquiry?

A. —

Department of Justice, Bureau of Investigation

Washington, D. C., October 29, 1923.

'Will you kindly compile for the information of this Bureau a list showing the total number of feet of Maple, Beech and Birch flooring manufactured by you each year from 1918 to 1922, both inclusive. If your records are not kept in such a manner as to enable you to state separately the number of feet of Maple, Beech and Birch flooring, will you kindly report your total production, and state which of these kinds of flooring are included therein. Any action to expedite this list will be greatly appreciated. Enclosed is a form on which the desired information can be tabulated, and a franked [fol. 1409] envelope for its return to this bureau.

Very truly yours, W. J. Burns, Director.'

Q. To whom was that inquiry sent?

A. It was sent to the names of 106 concerns appearing on the list introduced in the deposition of Edward B. Gordon at Chicago, Illinois.

Q. Does that represent all three of the lists that were there introduced?

A. It does.

Q. How many answers were received to that inquiry?

A. 103.

Q. How many were received from the producers who appear on the list introduced by Mr. Keehn, that is the first list?

A. 70.

Q. How many were on that list?

A. 72.

Q. Have you all the answers received there in that exhibit?

A. I have.

Q. Have you segregated according to states?

A. I have.

Q. Have you on the chart taken off the figures from the answers and set them out in the chart?

A. I have.

Q. So that you have a short brief statement showing the name of each company, the location and the production of Maple, Beech and Birch flooring, if any, for each year from 1918 to 1922?

A. Yes.

Q. Have you taken data from any other source than answers received to those inquiries?

A. The testimony adduced in this court.

Q. The 102 answers represent both answers to those inquiries, and the evidence given in court?

A. It does.

[fol. 1410] Q. From all that data have you made a tabulation showing the production of flooring in the entire country, and compared

that with the percentage of—made a percentage comparison of the production of Maple flooring by the members of the Maple Flooring Manufacturers Association?

A. I have.

Q. Where did you obtain the figures as to the Association production?

A. From the Association annual barometer reports.

Q. Will you just read into the record the percentage of total production for each year represented by the production of the Association members for that year?

A. 1918, 78.1; 1919, 78.9; 1920, 75.2; 1921, 71; 1922, 70.

Q. Have you made a similar tabulation covering the states of Michigan and Wisconsin?

A. I have, separately and jointly.

Q. Will you read the percentages represented by the Association production to the entire production in those states?

A. 1918, 91.6; 1919, 89.3; 1920, 85.6; 1921, 82.7; 1922, 82.8.

Q. How many of the answers received from concerns on those lists stated that they did not or do not now manufacture such flooring, Maple, Beech and Birch?

A. The list prepared by the Association, nine reported they do not manufacture Maple, Beech or Birch flooring, and of the other two lists. 24 reported that they do not manufacture Maple, Beech or Birch flooring.

Mr. Thompson: The Government offers this as an exhibit.

[fol. 1411] (Paper referred to marked Gov't Exhibit 68 and received in evidence.)

Cross-examination.

By Mr. Johnston:

Q. Mr. Hughes, how many non-members of the Association reported to you figures of production which have been included in the exhibit which you just offered?

A. Are you speaking of the entire United States?

Q. Yes, I want to know the number of non-members who—reporting non-members, who show figures of production that have been included in your tabulation?

A. Well, there were 106 names on these lists.

Q. Yes?

A. And none of them are members of the Association.

Q. But how many of that 106 reported production figures, that is what I want to know.

The Court: Perhaps, I do not understand you. I understood the witness to say, that upon one list, I don't know whether it is this list or not, there were 24 reporting no production.

A. Thirty-three on the three lists report no manufacture of Maple, Beech or Birch flooring.

Q. Then that is to be deducted from the hundred and—

A. One hundred and six.

Q. So your non-member production figures are made up then from reports of seventy-three non-member mills?

A. Yes.

The Court: Just so I may not make a mistake in that regard, you have included in your figures all production that has been reported?

A. Yes, sir.

[fol. 1412] The Court: And the thirty-three who were not included are concerns who reported they did not produce?

A. Yes, sir.

Mr. Johnston: That is as I understand it, I just wanted to have the number.

The Court: I simply wanted to get it straight.

Q. As I understand it, there were 73 non-members who did report some figures of production?

A. Some production.

Q. All of those have been included?

A. Yes, sir.

Q. In taking the member group did you include in your member group, the production of the Wisconsin Land and Lumber Co.?

A. I did not.

Q. They are included in the non-member group?

A. No, they are included in the Association production for those five years.

Q. Is there included in the Association production the Reed City plant also of the Horner Company, or what was formerly the Horner Co.?

A. Yes, sir.

Q. That is included in the Association?

A. In the Association production.

The Court: I do not know that it has developed here—if not it ought to—that the Reed City plant was sold to the Indiana Flooring Association on June 4th, as I remember.

Mr. Johnston: Mr. Ralston, I think testified to that.

The Court: But the receiver of the Horner estate operated that mill for a little more than two months after that time, so it would bring it up to August, at the end of August I think, or perhaps the [fol. 1413] end of July, I am not certain about that, 1923.

Q. Now, you did not request, I take it, from the inquiry which you read, figures as to the production capacity?

A. No, sir.

Q. Of any of these mills?

A. No, sir.

Q. So that you have no data as to what the production of non-member mills is?

A. I have not.

Q. Did you make any effort to determine the number of unlisted mills that are producing Maple flooring, Beech or Birch flooring, or perhaps all three?

A. We confined our inquiry to the list submitted in that deposition, but we did learn of the production of a mill in West Virginia, the West Virginia Pulp and Paper Company, and their production is included in the table for that state.

Q. They were not on the list?

A. They were not on your list, no.

Q. But, I mean, you did not yourself or through any governmental department attempt to make any inquiry as to other mills?

A. I called at the Forestry Service and asked them if they had such a list of manufacturers, and they replied that they did not. I made the same inquiry of the Bureau of the Census, and of the Department of Justice and received the same reply.

Q. Your source was the same, practically, as Mr. Gordon's if you recall his testimony?

A. Yes, sir, practically."

[fol. 1414] "Mr. Thompson: I will introduce a "Survey of Costs for the quarter ended September 30, 1917, M. P. P. basis, October 22, 1917," and ask that it be marked Government Exhibit 69.

(Paper referred to was so marked and received in evidence.)

"A table of concessions and additions, table of values, January 6th, 1921, two sheets, being dated January 6th, 1921.

(Said documents marked Gov. Ex. 70, and received in evidence.)

Mr. Newman: We assume they all came from us.

Mr. Thompson: These are all documents that came from you."

[fol. 1415] JOHN KNOX ARNOLD, being duly sworn, testified as follows:

Direct examination.

By Mr. Thompson:

Q. Where do you live?

A. I live in Washington, D. C.

Q. What is your occupation?

A. I am a special agent with the Federal Trade Commission.

Q. What college training have you had?

A. I was one year at Central University of Richmond, Ky.; three and one half years at Washington and Lee University of Lexington, Va.; two years in the school of political science at the George Washington University at Washington, D. C.

Q. What degrees do you hold?

A. Bachelor and Master from the Geo. Washington University.

Q. How long have you been with the Federal Trade Commission?

A. I have been with the Federal Trade Commission about 12 years.

Q. What did you do before that?

A. I was in the Philippine Islands four years.

Q. Were you ever in the Bureau of Corporations?

A. The twelve years I mentioned embraced my service with the Bureau of Corporations and the Federal Trade Commission, the

Federal Trade Commission succeeding the Bureau of Corporations in 1915.

Q. What has been the nature of your work, both in the Bureau of Corporations and in the Federal Trade Commission?

A. Investigation of industries, usually under Congressional resolution.

Q. Will you state briefly some of the more important investigations of that nature with which you have been connected?

[fol. 1416] A. Well, I was on the "Steel" investigation, principally of the United States Steel Corporation in 1911; investigation of the National Harvester Company in 1912 or 1913; investigation of the News Print Paper industry, and the book paper industry 1915 and '16; investigation of the Farm Implement industry in 1919 and '20; investigation of California Petroleum in 1920 and '21; investigation of Grain and Cotton, both cash and futures in 1922 and '23; also the Tobacco investigation involving the resale price fixing by the four successors of the American Tobacco Corporation, this investigation being made in 1921.

Q. Have you ever been connected with any investigation of the lumber industry?

A. I wrote several chapters of the old lumber report of the Bureau of Corporations about 1913, particularly chapters relating to association activities of lumber manufacturers, and of retail lumber dealers' associations in New York, the Pacific Coast and elsewhere.

Q. Will you explain a little more fully what the general nature of your work has been in these various investigations?

A. In the investigation of the Steel corporation and the National Harvester Corporation, it was in connection with writing a review of the report. In connection with the book and news print paper industries it was in the tabulation and writing the text of the chapters on prices.

Q. What I want to bring out a little more, not so much of the time covered, but as to the nature of it? Did you go into the costs?

A. It has been a studying of the—well, I can state the detail of one of the reports which really explains it. The Farm Implement [fol. 1417] report was called "the causes of the high prices of farm implements." In that, the evidence sought was statistical evidence of prices, the causes that affected prices, not merely statistical but also any Association activities. That was true of the Tobacco report and of the California Petroleum report, and of the Grain and Cotton reports.

Q. In these investigations and their effect on prices, then, do you consider both the factors within the industry and without the industry?

A. Sometimes, we compare the movement of price in the industry with the price of all commodities, merely because many people look for that, just like some people want to count the steps that would be covered by this testimony if it was placed end to end. We use that figure merely to satisfy the curiosity of the people that want it, that is all—that is, in the study of the causes of high prices. That does not relate to the study of scientific trends; that is another matter.

Q. Have you made such studies of cyclical trends?

A. A study of business trends and cyclical trends is not within the purview of the Federal Trade Commission. Cyclical trends are long time movements, up and down, of prices in the nature of a business forecast and is yet in its infancy, comparable to the weather reports, perhaps. The weather reports twenty-five or thirty years ago were not worth much, but by experience they are reasonably accurate now. If they see a storm coming out of Alaska they send out signals "cold wave." If the conditions act as they have usually in the past, that storm will take a certain path. Sometimes, however, it is diverted by other causes which originate later. These price [fol. 1418] trends are the same way. We do not attempt to forecast the future, and the price trend does not explain the past, but the chief purpose is to find out what will happen in the future if the factors do not change.

Q. What is the essential purpose of the Federal Trade Commission's investigations, such as you have been connected with?

A. Most of the Congressional resolutions ask for the cause of the high price, or in some cases it may be the low price, and we endeavor to find out, as far as we can, all the causes, both statistical and psychological.

Q. Have you made a study of the depositions introduced in this case of Mr. Edward Gordon and Mr. Grant Keehn?

A. Yes, sir.

Q. And the exhibits submitted therewith?

A. I have made such study as I have been able to make.

Q. I call your attention to exhibit number six in Mr. Gordon's deposition. State what factors are represented and compared there?

A. Chart 6 is a comparison of index of the prices of the product of the M. F. M. A. with U. S. Bureau of Labor Statistics indices of All Commodity prices, all building materials prices, and lumber prices monthly 1913-1923. It is on the logarithmic scale, with vertical index in index numbers. That chart reduces all the prices shown thereon to the same figure, 100% in 1913, and then shows the rate of trend through the succeeding years down to 1923. It does not indicate the magnitude.

Q. What is that compared with, general commodities?

A. It is compared with what is indicated in the table that I just read, lumber, building materials and all commodities.

Q. Is Maple flooring represented on there?

A. Maple flooring is represented on the chart by a White line.

Q. From the depositions introduced and the statement therein as to the method of preparing these charts, will you state whether you [fol. 1419] consider the comparisons, the methods of dotting the lines exactly comparable?

A. The wholesale price indices of the Bureau of Labor statistics are based mostly on market prices, which is shown in Bulletin 320 of the U. S. Bureau of Labor Statistics, pages 59 to 61, and Maple flooring index prices are based upon actual prices realized at the mill, as is indicated in Mr. Gordon's deposition, pages 54 and 55, and in other places. Therefore, the indices of the Bureau of Labor Statis-

tics, and the index of Maple flooring are not strictly comparable, because it is generally known among statisticians that actual prices realized tend to lag behind the market prices or quotations, both on increases and decreases. The reason for this lag being that a price is quoted, the quotation is taken and averaged up to that time; when the average price realized is taken, however, prices quoted, the man accepts the offer and sends in his acceptance, and later it is accepted, and that is the date of sale, but the quotation may have changed in the meantime. Ordinarily, the term, which is really an accounting term, "the price realized" means the price on shipments, not on sales. I don't know exactly how this price has been made, but whether it has been made on sales or shipments, there would be a lag behind the market quotations, as is explained in the bulletin of the Bureau of Labor Statistics. It is impossible for them to get them to get the prices realized, which they say, would be the best, if they could get them all on the same basis. But, to compare the market quotations, or market prices, with the prices realized, there is this lag which must be taken into consideration in any comparison of the chart. An inspection of the White line will show it has the appearance of having been shoved to the left. If you shove it back two months, it corresponds with the other lines. Then, using the [fol. 1420] second lag, referred to by Mr. Vanderblue in speaking of a lag which came, where there was a cause and effect, for example, the price of Maple lumber and the prices of Maple flooring, that lag is caused by the effect of one price on the other. In this table, none of these prices have any effect on each other in that meaning at all. None of the prices are component parts, that is, the price of none of these things is made up of the price of any other on this chart.

The Court: Is that true of Maple flooring and Maple lumber?

A. Maple lumber is not on this chart. I say, that lag would be accounted for by the fact that Maple lumber is a component part of Maple flooring.

Mr. Johnston: It is included in the term "lumber."

The Court: I probably was mistaken. I understood, so far as this first chart is concerned, that the term "lumber" meant "hardwood lumber."

Mr. Johnston: No, it is all lumber.

The Witness: It is all lumber, includes southern pine and western pine. On the yellow line reading "lumber" it does have Maple, but the White, all Maple, in that appears as very small.

The Court: Perhaps I am mistaken in another regard, my understanding was that so far as what is termed the "product," Maple flooring that the chart represented sales and not shipments. Am I right about that?

Mr. Johnston: That is correct.

The Court: In other words, if a sale were made in January for delivery during the year, the chart would represent the January sale and not the subsequent shipment.

That was my understanding.

Mr. Johnston: Yes.

Mr. Thompson: I understood it, as testifying that the Maple floor-[fol. 1421] ing prices were made up from the monthly report of average prices realized; that is my understanding.

Mr. Johnston: Monthly sales.

Mr. Thompson: Those are not monthly sales reports, as I understand it.

Mr. Thompson: Those are not monthly sales reports, as I understand it; they could not be without a report of average prices realized, because from all the testimony in this court, their method of quoting is all delivered prices, and what was realized could not be determined until the shipment had been made, and the buyer received the invoice and deducted the actual freight paid. I fail to see how these average prices realized could be reports of sales.

The Witness: I merely take the term used here. However, I made two comparisons.

The Court: I suppose I can dig it out, but that was my understanding. How is that, Mr. Keehn?

Mr. Keehn: It is the average prices realized on new orders booked during the month.

Mr. Johnson: Sales during that month.

Mr. Thompson: I object to that statement and move to strike it out.

The Witness: Accepting that explanation, there would still be a certain lag, due to the fact that quotations are sent out and accepted and must be filled, and the date of sale would show a certain lag.

Q. Turn to Exhibit 7. I understand that chart is practically a subsidiary one, not very important. Will you just inspect it and state whether you agree with the conclusion of that line represented [fol. 1422] on there, fluctuating in similar manner at all times?

A. This chart is to explain the reason for using the price of three grades of the product on chart six in one line, the white line. Chart six, the vertical scale used in the index numbers, all the products started close together. This chart is on the dollars per thousand feet. As a matter of abstract statistical practice there is no objection to such a scale; in fact, it is preferable where it is possible to use it. But using these two charts together, unless it is kept in mind that one is on percentage scale or index number scale, and the other on the dollar scale, the eye is misled as shown by the fact that Mr. Gordon was misled by this into stating the movement of those lines was practically the same.

An inspection of the chart, however, shows the blue line starts at about seventeen dollars and fifty cents and goes up to one hundred and seventy dollars, something over, no, one hundred and fifty some dollars, which is an increase of between six and seven times. The yellow line, however, starts up close to forty dollars, and only goes to \$180.00, showing only about four and one-half times the increase. The red line starts about \$30.00 and goes up to around \$160.00 or \$170.00, showing about five times increased. The mere inspection

of the chart, however, shows that the blue line fluctuates much more sharply, and rapidly than do the other lines; in fact, so much so as to indicate it to be almost a by-product. The other two lines, the yellow and the red line, the fluctuations are close enough together to consider them on a comparable basis.

The Court: Isn't that borne out—if counsel will pardon me if I [fol. 1423] ask a question—the charts or figures or tables which were introduced this morning, I noticed in examining them while the witness was testifying, that there is a much greater variation in the price of Factory at different periods than there is in the price of No. 1 and the Clear. That is represented, not by the multiple of increase, but the actual dollar difference?

A. Both would be true.

The Court: And that at times, there was a very much greater spread between Factory and the two higher grades than at other times?

A. Yes, sir.

The Court: And that is indicated by this chart, is it not, number seven?

Q. What is the purpose of the chart number seven?

Mr. Fowler: Let him answer the court's question.

A. The purpose of the chart, as stated in the depositions, is to show that all three grades fluctuate in about the same way.

Mr. Johnston: In quantities?

A. I used percentage. The only point in that is that the blue line did not move, either of dollars or percentage, in any relation to the other two lines, that is all. It is a subsidiary matter, but unless you inspect the chart, carefully, that would not be apparent, because the lines start at the left so far apart; they come about together up here at the high point. If you carry in mind that they probably started close together, as on the preceding chart, they are misleading, that is all. If this chart had been put on a percentage basis, the blue line would have been up two or three inches within the yellow or red line.

The Court: The mercury would have gone out of sight? [fol. 1424] A. Yes, gone off this chart entirely. There are so many charts in there, subsidiary charts, that are made on different bases from the main chart, that I merely call attention to that, perhaps, for some assistance to you. Perhaps you noted it yourself, however.

Q. What is the purpose for which that chart is used in the deposition?

A. This chart is merely put in to show that the three lumbers moved at the same rate of change according to the depositions, which it does not show.

The Court: Therefore, they use the single line to represent the product?

A. They have used the white line on chart six and all others.

The Court: This chart is to justify that?

A. To justify the white line; but certain statements are made in connection with the chart that I am calling attention to.

Q. Turn next to Exhibit 12?

A. All right.

Q. State what that chart shows?

A. Chart number 12 shows the relation of new orders booked by the M. F. M. A. to the volume of new building contracts awarded in the United States. Indices corrected for seasonal variation, monthly 1913 to 1923. Index numbers logarithmic scale.

Q. That chart compares trends or quantity?

A. That chart is in index number, compares the rate of movement and not magnitude.

Q. For that purpose for which these depositions were introduced, do you consider that quantitative comparison, or the comparison of the trends, would be the more important?

A. I consider a comparison of trends in prices as justifiable in an economic state to make a forecast of what conditions will probably [fol. 1425] be. I consider it absolutely useless as explaining what were the causes of price changes, because it has no quantitative relation to prices, nor do they have any exact quantitative relation to each other. You cannot say that a certain increase in price was due to this cause or that cause, unless you have a quantitative relation, not merely a trend. A trend shows the direction. A cause shows the extent or magnitude of the change. For example, if prices go up five dollars, the fact that building increased ten per cent, would not show any quantitative relation to that. Sometimes when building increased ten per cent, prices might go down two dollars; and other times they might go up ten dollars.

Q. You are speaking of prices. That chart compares the new building contracts and the volume of new orders?

A. Oh, yes, this chart hasn't the prices on it. Of course, the building contracts awarded is not an index to the orders for Maple lumber except in a very remote degree, for the simple reason that the building index shows all kinds of building irrespective of the kind of lumber.

Q. Would it be true, though, that normally as building increased there would be more orders placed for Maple flooring?

A. It would.

Q. But is there such a close relationship between the two, that that would be any evidence of control of prices?

A. Absolutely no quantitative relation that could be measured at all.

Q. I take it then, you would not consider that the mere similarity of trend would be indicative of any such thing as control of prices or lack of control?

A. I would not.

Q. As a matter of fact, you consider that the two trends are very [fol. 1426] closely similar on that chart.

A. This has been corrected by seasonal variation. In 1917, for

example, the volume of new building decreased at a very high rate. I don't know what the extent was, because it doesn't show on here; it shows somewhere else perhaps. The new orders decreased at a smaller rate, a less rapid rate. Another time, in 1920, the construction decreased almost perpendicularly and the new orders decreased at a slant. Of course, there is a natural lag in this proposition because there is a relation between the new building and the new orders, but one that cannot be measured on the figures available, cannot be measured quantitatively.

I would like to state at this point a general proposition that might be of some value. These charts are of three general kinds, scattered through first one kind and then the other: one, where prices of Maple flooring are compared with the prices of other products. This is a thing that I would not do in trying to ascertain the causes of the changes in price, because the relation is too remote; they are not the cause of each other, but both of them are caused by the process of the various commodity changes in that way, caused by an infinitude of business practices and causes too numerous to analyze. That is one series of the charts, comparing the prices of the products with the prices of other commodities. That, as I say, is used in the charts not only by the Harvard School, but also by Mr. Babson, I think; perhaps he does not use it, but he uses the figures to show the probable business trend, that sweep that goes on, disregarding the minor changes. They are of some value in that, perhaps.

The Court: I don't think I understand that, Mr. Arnold, your statement as to this chart number 12. Do you understand the line [fol. 1427] representing "new orders booked" is a price line or a volume line?

A. That is a volume line on this chart. The price line is on another chart, 14 I think.

The Court: And the volume of new building certainly is a volume line?

A. Yes sir.

The Court: You are comparing the two volume lines or a volume and trend?

A. Yes. But, in the index numbers you see, as an actual fact, the volume of building might have changed to any extent, and this line would not reveal the quantity at all; it only reveals the percentage of change in the volume.

Mr. Johnston: The rate of change?

A. The rate of change.

Mr. Johnston: That is all the chart tries to do?

A. All I said about this chart was that the lines show in themselves that there is no quantitative relation between the two factors. Even if you had them both in dollars there would not be.

The Court: If you start with a certain basis, and then represent the trend in percentages, why are you not getting a quantitative?

A. Not a quantitative cause and effect proposition. Of course, this is supplementary to chart 14, I think it is, which does show the price. The lines themselves, show that there is no exact relation

between the volume of new orders booked and the volume of new building, because the rate changes at varying slants. You see there are two propositions, What made the price change—or take this, what made the new orders change, or what made the volume of [fol. 1428] building change? And the other is, what are those factors?

The Court: Suppose the volume of new building increased fifty per cent within a given time, steadily increasing, for an illustration, and you find that the volume of new orders increased fifty per cent and steadily, isn't it fair to infer that there is a relation between two?

A. Yes, sir; but as I said, this chart does not show that?

Mr. Fowler: The lines should run parallel.

Mr. Johnston: The slant of the line would be the same; it would not necessarily run parallel if they were both fifty per cent.

A. On a logarithmic chart when the change is the same, the slant is the same; you can turn the paper anyway you wish, you don't need this cross line; if the slant is the same the change is the same.

Mr. Johnston: It doesn't matter how long the slant is compared with the other?

A. But you must compare them for the same month; not a slant in this month and a slant in another month.

Mr. Johnston: Each one of those checks represents the month?

A. Yes, and I say this chart does not show that, because you can see how the line slants differently, like in 1920, the white line drops perpendicularly and the yellow line goes off this way. I do not say there is no quantitative relation; there is no exact quantitative relation on this chart.

Mr. Johnston: It isn't intended to express that. It expresses the rate of change just as you stated, not quantities.

A. All right; the rate of change is shown to be not the same on that chart by very casual inspection.

[fol. 1429] Mr. Johnston: Of course, I differ with you on that.

The Court: Very well.

A. The second charts included in here, besides price comparisons, are the comparisons of the price with its component parts, such as the price of Maple lumber and the manufacturing and selling cost.

Now, I may state that in our study of the causes of high prices, that is one of the main things, because it is the component parts which have an exact quantitative relation to price. In other words, the price of the hard lumber, the manufacturing and selling cost, and the profit, show the price. You can draw a chart and show them down to one millionth of one per cent. Those are the things we pay more attention to. The other statistics are of subsidiary importance.

In this study, charts 19 & 21 take up that particular phase of it in a very incomplete fashion.

The other class of charts is the one we have been just talking

about, the supply and demand comparisons, and in there even though there were an exact quantitative relation between supply and demand, I would still in my investigation attempt to find out what had affected supply and demand before it was put on that chart; in other words, supply and demand might run apparently all right, but if one of them, supply, has been affected first, I would want to know it. In other words, I would go behind the figures and find out the cause. Those are the three general types of charts. All of them, except 2 are on the comparison of prices which I call type one, interesting for your cyclical trend, but not of much importance when you are looking for the causes why the prices were there.

The third type, supply and demand, is very valuable in your [fol. 1430] business forecast, in forecasting what will probably happen within the next two or three months, or five or six months, if some other factor does not come in and change it; but it does not explain what the factors are.

The second type I mentioned, comparison of prices with the component parts, that is, the raw materials, manufacturing and selling expenses, and profit is the critical and important comparison.

In these charts, I have been able to find nothing on profits, which may be introduced somewhere else in the case, but I have not examined anything but these depositions of Messrs. Gordon, Keehn, Vanderblue and Hettinger.

Q. With reference to those charts on cost of product, what factors are covered?

A. Chart 19 and 21 are component charts; 20 is merely an explanation of 19, it is of no importance, but exhibits 19 and 21 are component charts. They should have been on the same chart, and profit also should have been included.

Exhibit 19 is a chart showing comparison of indices of the prices of the product of the M. F. M. A. and of the Michigan mill prices of raw material, rough Maple lumber, 1913-1923. It is index numbers on the logarithmic scale.

The chart 21 is a chart of the same nature, showing average manufacturing and marketing costs, but not including the raw material.

Q. What do you consider the effect of showing in that manner merely showing the two factors of average manufacturing and selling cost and the price of the raw material?

[fol. 1431] A. Both of those charts, 19 and 21, are on index number basis. Charts 19 and 21 show two of the three component parts of the prices of Maple flooring; chart 19 showing the price of the raw material, Maple lumber, and chart 21 showing the manufacturing and selling expense. The third component, which is not shown, is profits. If all three were shown there would be an exact quantitative measurement of the three factors of prices. The component parts in such comparison as this should be in dollars and all the component parts should be included, otherwise such charts are excessively misleading. For example, suppose in

chart 21 that Maple flooring prices averaged \$72 per thousand; that Maple lumber cost averaged \$48.00 per thousand feet, allowing for waste in sawing and manufacturing, and selling cost averaged \$20 per thousand feet; suppose in 1922 the corresponding figures were \$75, \$45 and \$19; then the percentage changes in Maple flooring prices, Maple lumber prices, and manufacturing and selling costs, would hardly be noticeable, especially if each were on a separate ten-year logarithmic chart, as there would be changes of only four per cent of Maple flooring prices, six per cent in Maple lumber prices, and five per cent in manufacturing and selling expenses. But, the effect on profits would be that in 1921 the average profit was \$4.00 per thousand; that in 1922 the average profit was \$11 per thousand feet, or an increase in net profits of 175%. It should be noted also that the mere fact that the price line, or Maple lumber on chart 19 is sometimes above the price of the product; also that the average manufacturing and selling cost line, which is on another chart, is sometimes above Maple flooring prices, does not necessarily indicate a loss. These lines are based on index numbers and not [fol. 1432] dollars; therefore, they do not show fully the levels, but only rates of change, although Mr. Keeln has apparently been misled in this regard. On page 39 he said, regarding chart 21, that practically through the whole of 1921, the two indices were upon approximately the same level, and both declined at the same rate. Nevertheless, for all the chart shows, the Maple lumber, manufacturing and selling cost might have been forty five dollars per thousand, the price of flooring sixty dollars per thousand, a decrease in the same proportion—as the chart shows proportion only—thus leaving quite a sizeable profit. These two charts are quite misleading in the way they have been used.

Chart 20, which is not a component part, is put on a dollar basis. A chart which shows the comparison between the price, f. o. b. mill price of Michigan and Wisconsin, and rough Maple lumber today is of no importance as a chart.

Mr. Johnston: That is for a special purpose, isn't it?

The Court: For practical purposes of this case, ought not charts 19 and 21 to be combined?

A. They ought to be combined.

The Court: In order to get any results?

A. Yes, sir.

The Court: That are valuable.

A. Yes, sir; for this reason, if I may use an illustration, these charts by reducing everything to the index number basis, of course reduces them all to a hundred, you are familiar with that. That means, in addition, what the magnitude of the number is for comparison of prices, and supply and demand factors as used in the [fol. 1433] other charts; there is no harm in that, because we don't care what the magnitude is, but for a comparison, to show whether or not there is control of price of what the causes of the price changes are, you want the component parts, which are of course—there are three main ones; they show two and the other is of course profits,

which is derived from adding these two together and subtracting it from the prices.

Now, Maple lumber is started here at a hundred; Maple flooring is started at a hundred. Even if they change exactly, if the red line and white line coincided, and on the other chart the two lines coincided for the other costs, the increase in actual profits would be about 400%, because rough lumber started on a lower basis, and there wasn't much per cent of change at a smaller amount of money. If all costs increased a hundred per cent and prices increased a hundred per cent, profits also increased a hundred per cent. The example that I have used may not be very clarifying, but it is short.

Mr. Johnston: Do you understand the purpose of those charts is to show profits?

A. I read the testimony on these charts and I am stating what the charts should show if they are to explain the cause of the change in prices, and also how these charts are deceiving, as they have been used in the testimony, to show not only rate of change, but they have sought to use a level of prices, frequently when they should have referred to only rate of change.

I may say in this particular connection that logarithmic charts were first used by engineers who deal with quantities having exact [fol. 1434] relations. For example, the beam in a bridge or building, the stress on it is proportionate to its length, breadth and the weight to be put on it. They were used for a long time by engineers and they expressed exact quantitative relations. They were adopted some years back by economists and statisticians for the purpose of showing price comparisons, and in that respect they are all right, although the arithmetic chart in most cases is just as good. However, in using a chart of this kind, especially with a vertical range and index numbers, and trying to explain the causes of the change in prices where there are component parts, is not good practice. Such charts should show the actual price, or you can reduce the price to a dollar, if you want to, and say all component parts cost fifty dollars, profit was twenty-five dollars and price was a hundred dollars. Then in the next period, cost was thirty dollars, profit twenty dollars—manufacturing cost twenty dollars and profits fifty dollars, making a hundred dollars, and I want to call your attention particularly to the fact that these two charts, 19 and 21, are made on that index, which is not correct. The vertical line is the index number. I want to call your especial attention to the fact that that is quite misleading to use a chart in that form and fashion.

Q. Some evidence was introduced this morning as to per cent of profits on yearly sales, would that supply any element that you think should be shown in order to have importance?

A. That was a very common business practice and also was used by the Government to certain extent prior to the war when prices did not change much and comparison between rate of profit on prices was a very fair comparison but the war increased prices so much that it became a comparison that was not only useless but misleading. The only fair comparison when you are trying to find out what are [fol. 1435] the causes of increase in prices is to take a yard stick that

does not change with the price, that is the capital invested, the rate of return on capital invested is the figure we use, and I may say in many investigations where a company or a series of companies make more than one product it is necessary to allocate the investment to that particular product as well as the costs and the prices as was done here this morning.

Q. Will you refer now to exhibit 15, table of commodities of relatively higher peaks?

A. Yes, sir, commodities which at a higher relative price peak than the product.

Q. How many commodities are shown in the tables from which those were taken at lower price peaks than maple flooring?

A. The commodities in this table were taken from the wholesale price bulletin of the United States Bureau of Labor Statistics. Now that volume has in it to series of commodities, it is 450 commodities for which it shows prices. It is 404 commodities which it combines to show the average index, the commodities selected in this table having been taken from the 450 commodities, except the last item, shoes, leather glazed kid, top grade from Brazilian skin. That is not in the Bureau of Labor Statistics Publication and so far as I could read in the carbon copy of Exhibit 8, in this Gordon-Keehn exhibits, it is not in there. Those are the 404 commodities which are combined into the index number. In making up this table he has used a table of 450 commodities for which detailed prices are shown, and another thing, quinine increased less than product and yet he includes it in table of omitting quinine, therefore I think it is shoes which don't agree, that would leave 19 articles here with a [fol. 1436] higher peak which would be about 431 with lower peak.

Q. What can you say as to the comparative importance of some of these commodities having the higher peak price?

A. Some of the commodities in here are insignificant, one inch augers, door locks, iron steel butts, muriate of potash, potash caustic, bleaching powder, formaldehyde, quinine, which ought not to be in, and bed ticking.

Q. Are those given weights in the table?

A. In the publication of the Bureau of Labor Statistics each article is weighted in proportion to the value of all the 404 articles included in that index. I compared these articles such as occurred in those 404 and found that some of them had these percentages, muriate of potash, less than .01 of 1%. Potash caustic less than .01 of 1%. Bleaching powder .01 of 15. Formaldehyde .01 of 1%. Quinine .01 of 1%. Hops (Pacific Coast) .02 of 1%. Bed ticking .02 of 1%.

As I stated before, the items one inch augers, iron steel butts and door locks are not included in the weights, they are apparently too insignificant to include in the weighted index.

Q. Which of the commodities on that list, those having a higher peak price has the highest weight in the table?

A. There is only one of these 20 commodities here shown that has a weight greater than one-half of one per cent and that is California crude petroleum.

Q. What can you from your personal knowledge state as to the causes controlling the prices of that product?

A. The Federal Trade Commission issued a report on the California oil industry in 1921 covering the causes of the prices, increase in prices in California crude petroleum and that report will show [fol. 1437] what the results of that of that investigation were.

Q. Is that the report to which you refer?

A. Yes, sir.

Mr. Thompson: I will just introduce that in evidence and not stop to read from it, refer to the pages which show the conclusions.

A. In the letter of submittal sent by the Commission to the President of the Senate and in the summary of the report certain paragraphs show the results of the investigation, the details being shown over in the back, that is shown on pages Roman numerals IX and X, and pages 2 and 3.

Mr. Thompson: We offer those pages in evidence.

(Pages marked Gov. Ex. 70¹/₂ and received in evidence.)

Q. Turn to Ex. No. 16, what does that table show?

A. This table shows some wholesale commodities whose prices had a higher average level than the level of maple flooring prices during the period 1913-1922 inclusive.

Q. Do you consider such a comparison as of any importance in determining the causes for the prices of maple flooring?

A. It has absolutely no bearing on the question as far as any investigation I have made would be concerned.

Q. What is the source of the commodities appearing on that table?

A. The source of the commodities in this table in the wholesale price bulletin of the Bureau of Labor Statistics of the Department of Labor, United States Government, the number is not given of the Bulletin.

Q. How many commodities listed in that bulletin show prices [fol. 1438] lower, average prices lower than the price of maple flooring?

A. Well, 146 from 450 would leave 404—no, 346.

Q. Does the table as set out in that exhibit give 146 separate articles?

A. The title is commodities but the thing actually shown are different articles under general commodity heads. An inspection of page one will show what is meant by this. It will show that furniture is counted five times—well, on the first page wheat is counted five times, flour is counted five times, furniture is counted five times, boots and shoes counted nine times, woolen good counted fourteen times, cotton goods are counted twenty times, iron and steel products are counted 18 times. This accounts for about 76 commodities of the 146, 76 articles which are listed as 146 commodities.

The Court: For instance, we have on the first page as you say, five, wheat is counted five times?

A. Yes sir.

The Court: Giving the market prices at—

A. Different grades and different marks.

The Court: At four different places, or different grades, Chicago, No. 1, Chicago No. 2, Kansas City No. 2, Minneapolis No. 1 spring wheat and Portland, Oregon.

A. Most of the other commodities are grouped according to varieties and grades and sizes rather than geographically.

The Court: You would expect those different quotations to run in parallel lines or nearly so, wouldn't you?

A. Yes, sir.

The Court: In a commodity like wheat.

A. And the use by the Bureau of Labor Statistics to properly [fol. 1439] weight the article, it is all right to use them, but I called attention to the fact the way they are grouped, 20 articles in cotton goods, I believe it was, naturally they all moved about the same.

Q. Turn next to Keehn exhibit No. 28. State what that purports to represent.

A. Table 28 is a chart showing comparison of f. o. b. mill prices realized by reporting members of M. F. M. A. showing lack of uniformity in March 1920, March 1922. The table is a bar chart, arithmetic, dollars.

Q. Comparing with the previous chart, do you consider that those were normal months that were selected for that comparison?

A. A reference to chart 29 which shows one mill having the highest cost marked high, and the one mill having the lowest cost marked low. It is apparent that throughout most of the period 1913 to 1923 the high and low were almost the same distance apart and this is a dollar chart except in 1920 when there was a spread of \$50.00 between the high and low and in October 1921 when there was quite a little spread and again in March 1922 when the spread broadened out again. The three greatest spreads are 1920, March 1920, or April, I can't tell from this chart, close to March, October 1921 and March 1922. The other months except for about three or four months in 1920, October 1921, and March 1922, show the spread between the highest and lowest mill to be only a few dollars and about the same, so I would consider that March 1920 and March 1922 were not selected, could not be selected as representative months for that ten year period, especially March 1920.

Q. Turn next to Ex. No. 29 and state what that represents and compares.

[fol. 1440] A. Well, that is the one I just described, I am describing them both together.

Q. That was 28, was it not?

A. I was describing 29 in connection with it.

Q. My numbering is wrong, which is the one in reference to the cost and the price?

A. You finished with the bar chart?

Q. Yes, that is all you had on that, was it?

A. Why, only one thing, on chart 18 in March 1920 mills 3, 5, 14 and 30 are the middle group of clear, show a variation of almost \$25. from the high to low. If we take those same mills in March 1922, 3, 5, 14 and 30, omitting 26 which was not shown above, the

high can scarcely distinguish any difference in the height of 3, 5, 14 and 30, they are practically the same height, 26 was not shown in 1920.

By Mr. Johnston:

Q. You say that is true in March, 1922?

A. Yes.

The Court: That is to say, scarcely any difference between 3 and 5 and between 14 and 30 but as between 14 and 3 there is a distinct difference, is there not?

A. In the height?

The Court: Yes.

A. There is a slight difference, probably fifty cents, I can't tell on the chart exactly but it is very small. Maybe you haven't got the same chart I have.

The Court: Perhaps I am looking at the wrong chart.

A. The clear grade.

By Mr. Thompson:

Q. Of course, there is a difference in the heights, the principal [fol. 1441] thing there was the selection of the months?

A. Yes.

Q. In the other chart those months show greater differences than normal, 29 I think is the comparison of the average costs with the average prices realized.

A. I explained the white lines on 29. The red line is marked Average Cost.

Q. I will ask you whether the cost line on that chart shows any change in average cost corresponding to the statement of average cost put out by the Association under date of January 6, 1921, which is Gov. Ex. 34?

A. Table of values dated January 6, 1921, shows clear at \$105. The chart has the red line on a continuous level from about February or March 1920 to about September 1921. There is no change in direction in January corresponding to this sheet you show me.

Q. I haven't the exhibit here, just before you took the stand there was produced an exhibit which gave a determination of average cost in November, 1920, is that shown on the cost line?

A. There is no change on the average cost line here in November, 1920.

Q. Or is there any change in the average cost line for the determination of average cost published by the Association under date of May 21, 1921, which is Gov. Ex. 34-A?

A. This shows the clear at \$85.00. The chart shows it on the same date at \$154. or \$155. No change was made on the chart at that point.

Q. Turn to Ex. 18.

A. Yes, sir.

Q. Do you notice the difference in the trend of the several lines [fol. 1442] on that chart?

A. This chart compares the rate of change in the index numbers of oak, Arkansas soft pine, Southern yellow pine, Douglas fir and the products based on March 1919 to May 1923 as 100, in this case the basis has been changed from the basis ordinarily used heretofore for the 100, which was 1913 or the first year they used, and in this case the change of the base has a tendency to group the lines together from the middle of the chart to the end of the chart and to disperse them in the beginning of the chart from where the comparison starts to be made. One effect of that is to throw the white line down at a much lower point than the other four lines. Attention should be called to that so that it will be noted that the white line moves up much more rapidly than the other lines because it covers a greater space.

Q. Was there a lag in the movement of white line on that chart?

A. There is a distinct lag in the movement of white line as compared with the Arkansas soft pine and the Southern yellow pine and Douglas fir, the lag is not so apparent in regard to oak.

Q. To what might that lag be attributed?

A. That might be attributed to the same cause I stated before, because these are all prices not depending on each other, therefore it is not a cause of lag but apparently due to some difference in securing or tabulating the figures such as the product being average price realized and the Douglas fir, Southern Yellow pine and Arkansas soft pine perhaps being market quotations. I don't know, because it is not certain in the testimony what they are, although they are *set* to be taken from lumber publications which ordinarily show quotations.

[fol. 1443] Q. And the average price of sales for the manufacture being used for the white line you nevertheless consider that there would be a lag between the lines which were made from average quotations?

A. My experience in industries I have been in is that you must allow for that lag because of the fact that orders are accepted even if they are sent in a little late, if you have got a good customer at the prices you quote before the price changes.

Q. Turn to Ex. 24. One other question first on the previous exhibit in order to assume——

A. This is on chart 18?

Q. Yes, that is a comparison, is it not, with the other competing floorings in order to properly argue if it can be done at all with a similarity in the trends of those curves, proves that the price of maple flooring moved solely in response to the operation of law of supply and demand, what must be assumed with reference to the other commodities.

A. It must be assumed of course if that comparison is to be valid that the other commodities were not controlled.

Q. What can you state as to the control of the other commodities or any of them?

Mr. Johnston: That is objected to unless this witness is in position to state from actual knowledge as to the control of prices in

other commodities, I don't think that is a question upon which he could give opinion any more than he could express an opinion today that the price of maple flooring is controlled, clearly not a question for expert witnesses to testify upon.

Q. I will withdraw the question temporarily. Has investigation been made by the Federal Trade Commission which would cover that subject?

[fol. 1444] A. No investigation so far as I know has been made of flooring prices. The investigation was made of lumber prices of which the prices are shown in chart 6.

Q. Would flooring be included in the lumber prices shown?

A. Flooring is not included in the investigation so far as published, it was an investigation of lumber prices which are shown in chart 6 in this exhibit 6.

Q. What you said with reference to this exhibit also held true with reference to the comparison made in Exhibit 6?

A. Yes, it is perhaps a platitude to state that when one thing is to be compared with another to show that a certain thing does not exist, it must be assumed that that particular factor does not exist in the other commodity compared.

Q. Have you that report that you referred to here?

A. Well, this is a report of the Federal Trade Commission on lumber manufacturers, trade associations published in 1922 and covers the National Lumber Manufacturers Association, Southern Pine Association, Manufacturers of Southern yellow pine lumber; West Coast Lumbermen's Association, Manufacturers of Douglas fir lumber; Western Pine Manufacturers Association, Manufacturers of Western White and Yellow Pine; Northern Hemlock and Hardwood Manufacturers Association, Manufacturers of Hemlock and Hardwoods in the lower peninsula of Michigan; Northern Pine Manufacturers Association, Manufacturers of Minnesota and Wisconsin Northern pine; North Carolina Association; Georgia-Florida Sawmill Association; Southern Cypress Manufacturers Association, manufacturers of cypress lumber; California Sugar and White Pine Manufacturers Association; Redwood Manufacturers Association, manufacturers of California redwood.

[fol. 1445] Mr. Thompson: I offer that in evidence.

Mr. Johnston: We object to it as incompetent, irrelevant and immaterial to any issues presented in this case.

The Court: It may be received subject to the objection.

(Marked Gov. Ex. 71 and 72, and received in evidence.)

Mr. Thompson: We objected to all of this so-called economic defense as being immaterial. One reason for that is in order to carry it out to arrive at any logical conclusion it would be necessary to try a multitude of law suits in the one lawsuit; the whole theory of that is based on the comparison and movements of the prices of this product with the movements and prices of other products, in order to combat that of course it is necessary to introduce evidence

showing that the prices of some of the other is perhaps or certainly were controlled also by combinations.

Q. Turn now to Ex. 24.

A. Yes, sir.

Q. State briefly what that chart shows and what effect should be given to it in your opinion.

A. Exhibit 24 is a chart showing the relation of the prices to the demand and supply of the products of M. F. M. A. indices of unfilled orders and stocks on hand, of identical 15 members of M. F. M. A. Corrected for seasonal variations and index of the prices of the product of the M. F. M. A., corrected for decrease in the value of the dollar. Monthly 1912-1923. Index numbers. Logarithmic scale.

Q. What is the effect of this deflating of the value of the dollar?

A. Deflating the value of the dollar is permissible in comparison of volumes where you want to measure the volume of sales of the product, the quantity of the sales of the product and you have only [fol. 1446] the sales in dollars, but this is the first time that I have ever seen it done, that is a commodity under examination reduced on any such basis and it is not necessary statistically speaking that it should be done, if anything is to be deflated the other two items on here could be changed because the price is what is being examined, not necessary to change that, if you want to put the other two items on the same basis you can inflate or deflate the supply and the unfilled orders, when you can inflate or deflate a thousand feet just as well as you can inflate or deflate a dollar.

Q. What does that deflation of the value of a dollar presuppose in such a charge?

A. That presupposes that if the price of the product under consideration increases or decreases in proportion to the general index number, that that commodity is justified in being sold at those prices irrespective of conditions in that particular industry. In other words, tires at the present time, automobile tires and automobiles are selling at much less price both relatively and absolutely than they did in 1913 and 1914 in some cases or at least in 1915 and 1916. Now if they were to combine and increase the price of tires to the price of all commodities index number then the same argument would prove that those prices were not controlled because they were the old commodity or at least that it was justifiable to control them to that extent, it was reasonable to control them to that extent. Deflating value of the dollar of a commodity under examination is a dangerous practice, especially when the chart could have been made by deflating or inflating the other items and main- [fol. 1447] taining the absolute comparison of the price of the product.

Q. State briefly whether you think any argument can be adduced from the similarity of the lines in this chart.

A. Now this says, the relation of prices to demand and supply, and I want to point out again that that of course is only a relation, where there is any relation, is a relation of rapidity of movement and

not a quantitative relation that would have any exact effect on price, however, it is apparent that the lines don't always move in conformity to the relation in any case. For example, usually prices went up when unfilled orders exceeded the stocks, but they didn't always come down in any proportion certainly when stocks exceeded unfilled orders, for example, during the last half of 1918.

Q. I think that covers the charts now. Is there any that I have omitted?

A. I have them listed here, that is all that I have of any importance on these charts and on Messrs. Gordon and Keehn's testimony.

Q. By way of summary of this matter, will you state briefly your ideas as to the factors that should be considered in such an investigation as this and those which have been considered and covered by these charts and other exhibits and your opinion as to the validity of any arguments based on them.

A. The information that has been used in general in these charts to ascertain whether or not there was any control of price have been price relations with other commodities and two of the factors and [fol. 1448] two of component parts of the price of maple flooring, and then also certain supply and demand factors such as building construction, new orders, stocks and supplies on hand and production. No study in this deposition apparently was made as to the production costs and profits of the individual mills, or even an average cost for all mills, although an average for all mills is of little importance; nor has any study been made as to whether or not any price agreements, curtailment of production agreements, division of customers' agreements and so forth have been made, and yet all these things are essential to any study of the causes of the movement of prices. Supply and demand are merely the trail that has been left by these causes and do not explain what the causes were.

Q. With reference to these price charts in general, what do they show and what can they not show?

A. With the exception of 1921, which were a stab in the right direction but were not made on the right basis nor did not include the right figures, the other charts are such charts as are used in general study of business trend over long periods of time, as I said before, to forecast, such as the Harvard Business School and Mr. Babson and others in the country get out, you see the charts in the papers sometimes.

The Court: Let me ask you this question: From your experience in research work is it not true that unless there is an absolute monopoly and thus an absolute control, will not the general trend of prices of any commodity be in accordance with the law of supply and demand—now I mean by that the trend?

A. The trend will be, yes, sir. Do you want me to state the reason?

[fol. 1449] The Court: Yes; I have in mind my own reason.

A. Perhaps it is not necessary.

The Court: I will ask you to state it.

A. The reason as I see it is the impossibility of making a quanti-

tative measurement of the effects of the various causes. In some industries, as sales go up, that is, the demand goes up, the price goes up the price goes down, Henry Ford's automobiles, for example. In others it goes up. You can't measure it by a mere study of the figures on the same proposition, if the price goes up ten dollars the day after a price agreement was made to put it up ten dollars, you can't prove that all the ten dollars was due to the price agreement, because it might have gone up some anyway, it might have gone up all of it anyway, it might have gone up more anyway. You can't tell quantitatively and it is a psychological factor that cannot be measured with mere figures. There is a psychological proposition both on the demand and on the supply of different factors connected. I have somewhat of an answer to that here, do you want me to put it in?

Q. You might just read that into the record.

A. First I will say that it has been taken as granted all through these charts in argument that if you show supply and demand moved in the same direction and at somewhat the same rate of prices, that shows there could be no control. There has been a sufficient attempt to analyze the forces behind supply and demand. Price charts are merely maps to find your way about or to pick out where the roads lead, will show the course, prices and so forth have taken, but they do not show the proportion, the various causes bear to each other, [fol. 1450] or to the prices. The one task is to analyze the various causes for the prices, taking that particular course that they did take, and to ascertain how much effect each cause had on that force, that is the price charts. Now supply demand charts do indicate why prices change at particular times, but they do not show the reason for the extent of the change due to particular factors of supply and demand. In other words, the phrase, "Supply and demand" means nothing until analyzed. It is merely a convenient phrase to describe the algebraic equation of business where in the long run supply X plus price Y always equals demand Z, and makes it so because sales and purchases in the long run must equal. On analyzing supply it is found that it may contain both natural and artificial factors. The more important factors of supply are available, quantities of raw material, prices of raw material purchased, wages, expenses, freight and competition. The more important artificial factors are concerted price agreements, agreements to curtail production, agreements to apportion sales, agreement not to sell to price cutters, agreements to pool profits, and unfair methods of competition of various and numerous kinds. In other words, to restrict or prevent the natural factor of free competition. If any of these artificial factors be present, supply and demand may still function according to the economic theory of cyclic trend, but the supply has first been artificially affected, and the result of this artificial factor runs into and becomes mingled with the natural factors of supply and cannot be disentangled or unscrambled any more than a bad egg in an omelet can be separated, especially after the omelet has not only been stirred but has also been cooked.

[fol. 1451] It has been my experience in the Bureau of Corporations and the Federal Trade Commission, that it is impossible as a practical matter to show by statistics alone whether certain price changes have or have not resulted from combinations or price agreements.

The important thing because supply and demand can be affected by artificial forces of course in conspiracy as well as by natural forces in competition and of course in an opposite direction; in regard to using index numbers it cannot be too strongly urged that using these charts to illustrate the effect of supply and demand upon prices. It must be kept constantly in mind that such charts merely show the direction and rate of the change and not the extent or magnitude of the change.

An attempt has been made by means of various charts indicated as exhibits in the testimony of Messrs. Gordon and Keehn to show that other causes than concerted action or control, have been responsible for the extent or magnitude of changes that have occurred in the prices, production and stocks of maple flooring. To do this it would of course be necessary to account for one hundred per cent of all changes in prices, production and stocks as being due to other causes so as to leave nothing for the control cause to effect, but this has not been done, no such exact quantitative effect is shown by any of the charts, only trends and especially cyclical trends are shown which is attempted to disprove control by ignoring it, by the same method it could be shown that costs of production have no effect upon prices of maple flooring. Merely omit costs and state that the other factors show the same trend of movement as the prices show, [fol. 1452] which would probably be true, and it would be proven that cost don't affect prices. The only statistical statement that would be of much value in regard to whether prices of maple flooring are controlled or not, would be a comparison of the actual net profits of each individual member of the Association under consideration and of course even this would not be absolutely conclusive one way or the other, but would be indicative of the probable effectiveness or noneffectiveness of such control. Of course in securing such figures for profits and investments and the costs upon which they are based, it would be necessary to have them audited by independent accountants, otherwise they would be of little value, as the mills keep their books doubtless in different forms and many of them not corresponding to the best accounting practices, it appearing that certain elements which are ordinarily considered profits are included as costs in many cases.

Q. Just one other question—

A. I have just one more paragraph to read and then I am through. I read the one about Jack Dempsey, didn't I?

These charts used in these exhibits do show roughly that stocks and production and unfilled orders at somewhat the same trend of movement, but as so often stated, no exact quantitative relation is shown between them. Supply and demand must be equal of course in the long run, which merely means that if supply is curtailed in

any manner, demand will also be curtailed eventually by reason of increasing prices, or if prices are increased through artificial means, then demand will eventually be curtailed also because of the high prices. Supply and demand could be equal in the long run in an [fol. 1453] industry controlled by an absolute monopoly. It is inconceivable that an absolute monopoly would not vary production from time to time to correspond with prospective demand, especially where there was a wide fluctuation in business conditions as between 1916 and 1920, and that their stocks, production, and shipments would not trend in the same direction as the various elements on these charts trend. This of course is elementary. The important question, to reiterate, is whether prices, production and stocks, or any of them, are controlled by artificial means, and this cannot be proved or disproved by the general trend or movements of index number or percentage charts, or even by quantity charts which do not show the component parts. In connection with the use of the index chart and the logarithmic charts, I might say that in connection with the example I gave before about engineers having used these charts first for exact quantitative relations when economists and statisticians produce unequal masses—no, cut that out. Unequal masses moving at the same speed don't have the same momentum, and these index number charts compare unequal masses by their speed, the trend, and not by their momentum, quantitative relation, by reducing every factor to the same mass index number 100 there is produced the illusion of exact quantitative relation but not the reality. By reducing Jack Dempsey and the fast featherweight champion to the basis of 100 index numbers and counting the rate of the number of blows struck but not the power behind them, it could be proved that the featherweight could whip Dempsey, if you show merely the rate of increase of the number of blows and not the quantitative relation, which would be the speed of the blow multiplied by the weight behind it.

[fol. 1454] In connection with what you have just stated, your Honor, I might add this, that in describing these charts and these trends, and so forth, I have not been criticising their use in connection with this so-called cyclical trend which merely is a guess, and something that is necessary, however, in the business, because it is a little better guess than a guess based on nothing. It has not been perfected up to this time, however, to any considerable extent. What I am basing my remarks on is solely whether these charts and the comment on them, prove that there was not control. I do not argue on the other side that the charts prove there was control, because you cannot prove that by charts, you can't prove it either way. I wanted to bring out the point that I was not criticising the use of these charts for the general move and forecast of business in this cyclical trend. Neither am I proving it. I am just leaving that to one side because I think it has no bearing on the question of control to which I am testifying.

The Court: There is one more question: Is it true or is it not true that price levels may be lifted by artificial control and at the same time the general trend not be affected? Perhaps I don't make my-

self plain. That price levels may be lifted over a considerable period of time by artificial means and at the same time the trend remain the same, the general trend?

A. The rate of trend?

The Court: Yes.

A. Yes, sir; the rate may be due either to the control, partly to control, partly to natural factors, or entirely to control, if that is what you had in mind.

[fol. 1455] The Court: In a number of these charts that have been introduced as Exhibits, the lifting of prices under such circumstances as I have stated, would not appear would it?

A. It would not cause a change in the line necessarily, no, if that is what you mean.

The Court: That is what I mean.

A. It would not cause a bend, that would mean if that control had not come in the line would have bent down or would have bent the other direction.

The Court: No, if control were removed there would be a bend in the line?

A. Yes.

The Court: But if the control is maintained, there wouldn't be any bent in the line, would there?

A. No, it would continue, the law of physics, I believe, is that it would continue in the same direction indefinitely, until operated upon by new forces it would not change the direction.

The Court: That does not quite answer my question because I have not quite made myself plain. If the same force artificially applied—

A. You mean the control is continuous?

The Court: When the control is continuous then the line would bend according to natural laws, would it not, natural economic laws?

A. There would be one constant factor and the movement would then respond entirely to the other changing factors.

The Court: And thus, there would not be any change in the trend line, would there?

[fol. 1456] A. There would not. Also I might state that for the period taken as the base, 1913, if there were control in that period, and it starts on an artificial basis, of course then the line could move in response to the other factors without showing any effect of this control. If the control was about as effective in one period as the other, if one force didn't change, the direction would be changed entirely by the other forces. I don't know whether I get your point exactly on that or not.

The Court: I think you do.

The Witness: But I have been through a good many of these things and have been bumped on the head by a good many of those things cropping up.

The Court: In other words, this would be true, would it not, the price level is raised and the same artificial force is applied continuously, you would expect then that that line of price trend would be influenced by the other causes, natural causes and not—

A. Exactly, and in an exact quantitative relation which, however, could not be proved. You can only show the effect of the total causes in figures. The other must be estimated. However, if the control element were constant, it wouldn't show at all, either in the increases or decreases or the rapidity of the trend of the line. Of course in projecting these lines for the study of business cycles, they assume that the factors remain constant, that is not true, but when they unite many commodities or lack of competition in one over-balance—or balance the combination in the other, speaking of any one commodity, however, of course that is not true. I think I have [fol. 1457] something here on that control.

The Court: I think the question has been answered.

Mr. Johnston: Shall I proceed, your Honor?

The Court: If Mr. Thompson is through.

Mr. Thompson: Yes.

Cross-examination.

By Mr. Johnston:

Q. Just what is your connection with the Federal Trade Commission?

A. My title is special agent.

Q. That work, I assume, involves investigations of various corporations and associations or individuals who are under investigation by the Federal Trade Commission?

A. It covers that, yes.

Q. That is the major portion of your work, is it not?

A. It covers, of course, investigations into published sources, we use the figures of other government departments that are applicable to the case rather than collecting them all independently. Such general figures as are available we use. Then we go and get the figures and the other information which is not available, elsewhere.

Q. In other words, you make, do you, a personal examination of these different corporations or associations that you are inquiring into, examine the witnesses as well examine the documentary evidence?

A. In regard to the investigations, made by the commission there is no examination of witnesses.

Q. I mean your investigation, just what do you do?

A. My work has been of three kinds, you might say, one is the [fol. 1458] study and preparation of statistical data, the other is the preparation and writing of reports, the other is the collection in the offices of associations and companies of various kinds of data.

Q. In other words, you are engaged in just such work as would be involved in an examination of a concern such as the Maple Flooring Association, by your department?

A. Yes, sir.

Q. You have been doing that for about twelve years?

A. Yes.

Q. I suppose when you have an investigation of this kind, you quite normally start off expecting to find some evidence of control of prices?

A. No, I found cases where there was no control.

Q. You are looking for that, of course?

A. We are looking for whether or not there is control, yes.

Q. You are shaping, in other words, your investigation along those lines?

A. Congress calls on us to report to them whether prices of oil, for example, have been increased by reason of combination, and naturally we attempt to answer that resolution.

Q. You attempt to find a combination?

A. We attempt to find whether prices were raised by a combination.

Q. You say that you prepare these price indices, such as the price indices which are used in Mr. Gordon and Mr. Keehn's report?

A. I said nothing of the kind. I might explain there that the [fol. 1459] Federal Trade Commission, the division of labor is carried out to some extent; I do not do the computations.

Q. You have seen them prepared?

A. All I do is to superintend the work and give instructions as to how it is to be done.

Q. Do you personally prepare any of these charts, or logarithmic scales, which are used by your department and the Department of Labor?

A. I may say, the Federal Trade Commission, so far as I know, up to the present, has not used logarithmic charts.

Q. You are aware other departments of the Government have in their statistical work?

A. The Federal Trade Commission may have used them. I say I am not ware of it up to this time. I will say this, that we make logarithmic charts, I have made them myself, in order to study the material; but when it comes to making a report, our reports are not intended for statistical experts, so we usually use tables, and perhaps some small charts.

Q. The Bureau of Labor Statistics have used those charts to a considerable extent?

A. The logarithmic chart is perfectly all right.

Q. Answer my question if you will.

A. All right. They use the logarithmic chart.

Q. You say the comparisons which you make between the prices of commodities, the all commodity index, lumber indices, is just to satisfy the curiosity of people, is that it?

A. I had reference to the fact that our reports are not mere economic trend development reports, but are specific.

Q. Whose curiosity are you attempting to satisfy in the whole report?

A. We are attempting to answer the resolution which Congress has passed.

[fol. 1460] Q. Then do you make these comparisons of price trends in various groups of commodities for Congress' information?

A. I think they have been made and put in reports, but not by me.

Q. Is it your view that these comparisons of price trends which are made to form a part of your reports, mean nothing?

A. If they are in a report in answer to a resolution asking for the causes of the increase of high prices, in a particular commodity, they have little value.

Q. They do show this, do they not, that one group of commodities has not decreased in its prices more rapidly than another group?

A. Yes, it shows—

Q. Or, where there have been advances in the price, I will say, of commodities which in this instance embraced four hundred and four different commodities, that if a single commodity moved along the same general line, it would show that the price of that commodity, so far as its advances and retirements were concerned, moved along the same line of trend, wouldn't it?

A. Yes.

Q. It would not show the quan-tative advance of that commodity, or any other commodity?

A. Nor the causes.

Q. The quan-tative advance would be of no significance?

A. The fact that—

Q. Just answer that; that quan-tative advance would be of no significance in determining anything about the fixation of price, in itself?

A. Yes, it is.

Q. Does the fact that the price of Maple flooring is higher in quantity per thousand feet than the price of a dozen shoes mean [fol. 1461] anything?

A. Not in comparison with shoes, but in comparison with costs.

Q. We are talking now about commodity comparisons; we haven't got to the question of costs. Does the quan-tative comparison of the prices of commodities have any significance? Would that amount to anything?

A. Personally, I like to see both the table showing the quan-tative and the chart showing the percentage, where you must have a percentage.

Q. Of what value is it to compare shoes and Maple flooring so far as the quan-tative advance is concerned?

A. I would not compare shoes and Maple Flooring so far as the quan-tative advance is concerned; I would not compare them in percentage.

Q. You would not compare them in percentages? Would you admit that the evidence shows in the specific instance the commodity which in this instance is Maple flooring, moved in the general line, upward or downward movement of all commodities?

A. It shows that; yes, sir.

Q. Whether that means anything or not, in the ultimate determination of the question of price fixation, it does show that relationship, doesn't it?

A. Perhaps I can shorten this some, if you wish, by making this statement:

Q. No, just answer my question, and do not enter into a speech.

A. I am not criticizing the use of the percentage chart.

Q. I don't care what you criticize; just answer my question, and we will get through.

A. All right.

Q. That is true of chart 6, then, which is the first chart that [fol. 1462] you considered, that that chart shows the movement of the price of Maple flooring in comparison with all commodity movements and is a correct comparison so far as showing the rate of change?

A. I think I claimed it was not correct, due to the fact that the prices were made on a different basis.

Q. You are assuming that the prices are different, upon a different basis. Did you prepare or secure the prices which go to make up the prices of the four hundred and four articles in the commodity index?

A. No.

Q. Those prices were taken from market prices, were they not?

A. I said most of them were.

Q. Those market prices were taken from trade publications showing actual sales,—that is to say, they were the sales during the preceding week of the given commodity on that market, to wit; lumber, isn't that so?

A. They were not average sales.

Q. Do you mean to say trade publications which show the quoted prices being received for various commodities do not represent actual sales?

A. It represents what the reporter considers the market price in many cases.

Q. Are you in a position to say that those trade publications do not publish the record of actual sales?

A. I base my remarks on monthly bulletins of the Bureau of Labor statistics, which has been put in, and the average market which discusses that particular question.

Q. Does it state where these prices are obtained?

A. It states in a certain place that if it could secure the average prices realized, that would be a better figure to use.

[fol. 1463] Q. Yes? But does that publication at the page which you have marked, purport to say that the prices which it has secured from the trade publications are mere guesses, or estimates as to the market, rather than market prices?

A. The comparison I made was this: irrespective of whether the average prices received or the quotations is the base figure to use, a comparison of them will show a lag.

Q. I understand perfectly what you said.

A. All right.

Q. What I am trying to get at is, how you know that the all-commodities index prices are made up of quotations and not of the records from trade publications of actual sales, as, for instance, the prices received by the Maple Flooring Association will be published

in a trade paper. That will not represent what you term a quotation, but it will represent a sale, will it not?

A. I used the expression "most"; I did not say all, because I had in mind that they do use the average net prices for a few commodities where they can get them.

Q. How many of those 404 commodities are represented by prices which are taken from actual quotations of sales, and how many from so-called quotations or offers?

A. The monthly bulletin does not contain that information.

Q. You are guessing at it then, that the proportion of them are taken from quotations, and not from records?

A. I didn't name any proportion.

Q. I understood you name no proportion, but you said that a few of them were taken from actual sales. How do you arrive at the conclusion that only a few of these prices were taken from actual sales?

A. From the description of the process given in the monthly [fol. 1464] bulletin.

Q. That process is described in the monthly bulletin, and is that they have taken these prices from various trade publications?

A. They have secured them not only from the trade publications, but also from the Board of trade, also business institutions, associations.

Q. Board of Trade, as you understand it, publish their actual sales?

A. They do not; they publish quotations.

Q. The grain exchange, for instance, do they not publish a record of actual sales?

A. They publish quotations.

Q. Do you call it a quotation when they record so many thousands of bushels of May wheat sold at so much?

A. They do not so record them.

Q. They do not?

A. They do not. I was down on the Board of Trade—

Q. I have had a good deal of experience with that, and I understand they do publish them?

A. The prices quoted, but not the quantity. I was down on the Board of Trade several months last year.

Q. In other words, what you are doing here, is to say that without any knowledge of the subject, except as you have read it from the bulletin, and except as you have read the general statement from the price bulletin referred to, that the majority of the prices embraced in the all-commodity index are prices which are taken from quotations and not from actual sales, that is my conclusion.

Q. Your guess. With respect to the lumber items, the Bureau of Labor statistics obtained most of their data as to lumber prices, from [fol. 1465] the lumber trade Associations, doesn't it? Isn't that so, that that is the source? In other words, the principal source of their prices for lumber which they use in their lumber price index is obtained from the Associations themselves?

A. Are you speaking about chart 6 now?

Q. Yes, about the item which is taken from the Bureau of Labor statistics, and entitled "Lumber."

A. I have no detailed knowledge as to how it is made up.

Q. Then you don't know whether those lumber prices are prices which represent just exactly the same thing which the product represents, namely, the prices realized for the month or not, do you?

A. No, I don't know what the prices realized represent.

Q. So, for aught you know the comparison between the product and the line representing lumber, which is lumber prices as they are taken from that price bulletin, may be upon exactly the same comparison, and if they are obtained from trade associations, they probably are, because that is the usual way to make them up?

A. If you put the word "if" in, I would answer yes.

Q. You don't know anything to the contrary, do you?

A. No.

Q. When you make an assumption that a converse state of facts exists, you are merely assuming that without any information to base your assumption upon?

A. No, I had such information as is contained in this wholesale price bulletin.

Q. Yes, but if doesn't say anything with respect to lumber there, which indicates that those lumber prices are not obtained from the [fol. 1466] trade associations, showing their average delivered prices during the month, does it?

A. Not that I recollect.

Q. Now, how long have you spent, how much time have you spent in the study of this particular subject of the movement of prices of Maple flooring?

A. Since November 22nd.

Q. November 22nd, 1923?

A. Thirteen days, I think it is.

Q. Have you spent all of your time on this subject since November 22nd, or have you been doing other things?

A. I think I have spent my time pretty much on this one subject.

Q. Have you ever heard of Professor Hettinger, know his work at all?

A. No.

Q. You don't know him as a statistician?

A. No.

Q. Have you ever heard of Professor Homer Vanderblue?

A. No, sir.

Q. Have you ever read any of his books on Economic subjects?

A. No, sir.

Q. Ever hear of his work on railroads—you have had something to do with them? Did you have anything to do with the investigation of railroad costs, or is that with the Interstate Commerce Commission?

A. That is with the Inter-state Commerce Commission; we have nothing to do with that.

[fol. 1467] Q. You have never had any occasion to investigate any of his books on general economics?

A. No.

Q. Or, railroad transportation?

A. No.

Q. Do you know any of the economists connected with the Harvard school of business—school of administration?

A. I know some Harvard economists, whether they are connected with that particular school or not, I could not say.

Q. I gathered from your remarks that you do not think much of the economists connected with that school, so far as their ascertainment of existing facts are concerned? You rather look upon them as prognosticators of future movements?

A. I made a careful distinction there.

Q. In other words, you are rather of the opinion, that the economists connected with Harvard University, particularly with the school of business administration, that their opinions are not worth very much on the question of economics and statistics economics generally?

A. I distinguished very clearly that I made no criticism of their economic studies of price trend. True, I said, I have very little opinion of their ability to investigate and report on an industry to ascertain whether there has been price control or not.

Q. Or to make comparisons between price trends and price movements?

A. I noted in the testimony of Mr. Gordon and Mr. Keehn a very careless discussion of the charts.

[fol. 1468] Q. Did you notice their discussion of the question of the law of supply and demand, or did you read that?

A. I read it.

Q. Did you agree with that, or did you find fault with their statement of the economic principles involved?

A. I found no fault with it.

Q. That is about correct?

A. No, I don't say that. I found no fault with it.

Q. What do you mean when you say you find no fault with it?

A. It does not apply to the subject under discussion?

Q. That is, the question of supply and demand have nothing to do with the question in this case?

A. The mere bald question of supply and demand does not amount to anything unless you analyze the factors of supply and demand; that is what I mean, and the correct factors.

Q. None of these charts which compare price indices are charts which tend to show differences in fixed relationships are they, or volume?

A. The ones in dollars it is easy to ascertain approximately.

Q. They are used for that purpose?

A. There is at least one arithmetic chart.

Q. I am not talking about the arithmetic chart; I am talking about the logarithmic?

A. Logarithmic charts are intended to show rapidity of movement.

Q. And similarity of movement?

A. If it is similar.

Q. By similarity of movement is meant, so far as these charts are concerned, the slant of the line, does it not?

[fol. 1469] A. Yes.

Q. The height of the line or the length to which the line goes down has nothing to do with the question of the movement,—that is, of similarity of the movement?

A. Of course, if it goes up high, while the other does not, it makes a difference. If the slant is the same, then it makes no difference.

Q. Where you are comparing things that may have an entirely different price level, the fact that one of these lines moves upon a higher range than the other, has no significance in a logarithmic chart, does it?

A. Except it shows that since the starting point, if they started together, it has risen at a more rapid rate.

Q. That is principally due to a greater percentage of rise, although it may not be more rapid at any given point?

A. Oh, at any given point?

Q. At some point in the comparison of those two price movements, one line has moved more rapidly, that is, its upward or downward movement has been more rapid than the other?

A. Yes, unless they are parallel all the time.

Q. Would you expect to find in the comparison—when any such comparisons are made as made in these logarithmic charts, would there be an absolute movement of the lines directly parallel?

A. If all the causes were the same, they would move parallel.

Q. Have you ever found a situation where that exists?

A. No, because I have never found all the causes the same.

Q. In other words, the coordination which is shown upon these charts, is for the most part a very close coordination, is it not?

[fol. 1470] A. It is not. In many cases there is a very remarkable difference which has been slurred over on this chart 6, where there are five lines; there is a possibility of hundreds of variations. You can compare each month with each succeeding month and each line with the other.

Q. Take these months, if you take the months upon that chart and the years?

A. Of course, the movement with the month is very infinitesimal; it does not show on here.

Q. Nothing in it when you cover a ten year period?

A. It is a month chart, so it wouldn't show.

Q. Each month has been platted upon that chart when the chart is drawn, isn't that so?

A. Yes.

Q. That is the way it is drawn?

A. Yes, sir.

Q. In other words, there are twelve lines between each major

line, and upon each line is indicated by means of a dot, the months' movement, is it not?

A. Yes.

Q. Or haven't you read the testimony?

A. Yes.

Q. That is the way they prepare them?

A. That is the way it is said to have been prepared?

Q. Can you see anything about these charts to indicate they were not so prepared?

A. No, I think they look all right from that point of view.

Q. You haven't found that the figures indicated on these tables are not correctly platted upon these tables?

A. I haven't had occasion to make that comparison except in one case.

[fol. 1471] Q. Have you found they were not correctly platted?

A. I found on chart 29 there seemed to be one line not platted according to the facts.

Q. Have you checked up any of the others?

A. No, I—had no time to do that.

Q. Have you any reason to believe the figures are not platted on there according to the facts?

A. No, I must accept those without comparison, because I haven't the time.

Q. Now, taking chart number six, what is meant by coordination in the movement of lines, showing price trend, or any other trend movement, is that the lines move in the same general direction at about the same time, is that not true?

A. I think that time is considered important in that respect.

Q. In other words, one of the important things to consider, is whether or not at about the same time the lines all tend upwards, or at about the same time the lines all tend upward?

A. Did you say whether that is important?

Q. Yes.

A. All depends upon the purpose for which you are to use the chart.

Q. If the purpose is to show whether or not price movements were of a similar nature, so far as trend was concerned, and that is what we are interested in here, now do you mean to say, without looking at that chart, you would not say that there was a general movement during those periods of time of all those lines in the same general direction, and at about the same time?

A. If you look at the chart, covering over 120 months, at a glance [fol. 1472] you see the lines go up and down and swing around over each other in the same general line.

Q. You understand that this is an attempt to show the minute fluctuations between the prices of these commodities during a given month? You could not do that with a chart of this kind, could you?

A. That would not be possible to do except on a very much more detailed chart. Even if you did it would not make any difference in the trend.

Q. Now, when you came to this chart 12, which has to do with the

comparison of new orders booked, by members of the Association to the volume of new building contracts awarded, you made some criticism of the use, I believe, of new orders booked as data for the preparation of such an index, did you not? Do you know of any other data that is available over a period of from 1913 to 1923?

A. For what purpose?

Q. For the purpose of showing the volume of building construction. Is there any other data than the data that was used in this case, of new orders booked, I mean, statistical data?

A. I know of none.

Q. In other words, these gentlemen have used for the purpose of making this comparison the only statistical data that is available, is that not so?

A. On this particular chart.

Q. I mean, to represent the volume of building construction?

A. All right.

Q. They have. Now, you agree, I believe, that the volume of new building construction has something to do with the demand, or lack of demand for Maple flooring?

A. Yes.

[fol. 1473] Q. You know the uses to which Maple flooring is put, do you?

A. Some of them.

Q. You know that Maple flooring is used almost exclusively in buildings, either factory, commercial or residence—that is, that is its exclusive use? It has no use in manufacture or in the making of any other products, but is confined solely to use in floors in buildings, commercial, factory or residence. Now that being so, would you expect to find the demand for that product quite closely connected with the volume or extent of building construction?

A. Why, I would expect it to follow generally that direction, of course, but not exactly.

Q. Not exactly?

A. No.

Q. Looking at chart 12, is not that movement as portrayed upon that chart of comparison of volumes—the indices of volume just about the sort of a movement that you would expect to find when you are comparing new business with the volume of building construction, by “new business” I mean in this product?

A. It seems to be the exact response, yes, that is what would happen.

Q. Now, we come over to the chart 19 and 21, which will be a comparison of the prices of the product with the rough lumber. Now, I believe you said that you thought such comparison was of considerable significance, that is, the comparison of a product with its factors of production?

A. Yes.

Q. Of course, if you had been making this comparison, you would have compared the profit, if you had it, wouldn't you?

A. Yes.

Q. Of course it is very evident Mr. Keehn and Mr. Gordon did not have the profits, and that they were not available and are not

available except in a very limited degree. Do you find that individuals and firms very gladly give up their information as to profits to you?

A. They never refused me yet.

Q. Never refused you?

A. Just have to request them and they hand them in. That has been my experience. There have been some other experiences that I could not speak for.

Q. You don't take their statements, of course, when they hand them in. You send an order out from your department to go to each factory and check up and see whether they keep the books the way your department thinks they ought to keep their books in order to correctly show their profits, is that correct?

A. Yes.

Q. Then you make up a new profit and loss statement for them after you audit their books and have corrected their method of keeping their accounts?

A. If it is found necessary their method of keeping the books is revised.

Q. Then when you have gone into that phase of the matter, you tabulate those profits, but you don't even believe that you can average [fol. 1475] them up and get anything?

A. Oh, we average them sometimes.

Q. The average don't express anything, as I understood you, of any importance?

A. It doesn't express as much as the individual figures. The reason for not publishing individual figures is the same as for not putting them in court. We do not want, if we can help it, to reveal individual transactions of particular companies. We have, however, used them with numbers where it would not reveal them, or we have grouped them.

Q. Just how do profits show anything more with reference to the fixation of prices than a comparison between the movement of the price of the raw materials, where there is only rough lumber, in this case, which is the only raw material, and the price of the product?

A. Because there is an exact quantitative relation between profits and capital invested which can be measured down to the one millionths of one per cent, if you want to do it.

Q. Aren't there a great many other factors besides the price of the product that enter into the question of whether or not at the end of the year, the manufacturer has or has not a net profit?

A. A great many factors?

Q. Yes, a great many factors.

A. Yes.

Q. In other words, two manufacturers side by side in the same city, having approximately the same invested capital, and getting for their product identically the same amount of money, one may show a profit and one may show a loss. You find that situation very frequently, don't you?

[fol. 1476] A. Well, yes.

Q. Due to management, due to many of the other incidents of the operation of the business, the managerial end of it plays a large factor in the question of profits or lack of profits, does it not? Now, suppose you have that situation and you find "A", manufacturer made 10% and "B" manufacturer in the same situation lost 10%, would the fact of the profit by "A" and the loss by "B" show anything to you, as to whether or not "A" and "B" were selling at a fixed price or one which was not in response to the law of supply and demand?

A. I have answered before that I would not deduce such a conclusion from mere figures.

Q. That is what I want to know. Then the profits would not show anything to you under those circumstances?

A. Oh, yes, they might show a great deal.

Q. I mean they would not show anything to you as to whether or not "A" and "B" were selling their product at a fixed price, or at what the market dictated?

A. If I had the profit alone for one year, no.

Q. Now, if you found "A" and "B" and "C" and "D" all manufacturers of the same product, all selling their product at identically the same price, that would mean something to you, wouldn't it? I mean, over a period of time, let us take a year?

A. It might mean something, but what do you mean—specify.

Q. I mean it would indicate and be a strong indication to you of a fixation of that price?

A. No, in some of the most competitive conditions is where there is the least fluctuation in price.

Q. I am talking about no fluctuation in price, a uniform price, doesn't that indicate anything to you at all, as to whether or not [fol. 1477] that price is regulated by agreement, or conspiracy, to use your language, or whether it is regulated by supply and demand.

A. I might think it was peculiar and I would look into the matter.

Q. I am not asking you what you would do; I ask you what effect it would have upon you?

A. It would have the affect to make me look further. I wouldn't come to any conclusion on inconclusive data.

Q. Wouldn't that be of much more significance to you in forming your judgment as to whether or not during a given period of time, one year or two years or any other period that you might take, the prices of those products by different manufacturers, had been the same; wouldn't that be a greater factor in determining in your mind that the price had been regulated or controlled by artificial means than any other factor?

A. If they had been the same over a considerable period of time, it would be a suspicious circumstance.

Q. A very strong factor in determining your judgment, is not that true?

A. Sure.

Q. And would cause a presumption in your mind which you would have to have rebutted by sufficient evidence that there had been no fixation?

A. No, we make no conclusions until the report is finished and

all the evidence is in, and then our conclusions are from all the testimony. I never have come to conclusions on these little isolated facts.

Q. You never start out in any of these cases with any preconceived ideas of what you are going to find?

[fol. 1478] A. No, I am greatly surprised sometimes at what I find one way or the other.

The Court: You would make an ideal judge.

A. Well, you understand I am assigned to this merely as a matter of course. It doesn't make much difference whether I am assigned to one or another.

Q. Quite an anomaly in my experience in the investigating department. I see that you refer here to the report of the Federal Trade Commission upon lumber and trade associations, I assume for the purpose of indicating that the prices of lumber as contained in the Bureau of Labor Statistics, represents the prices of an industry where there are a great many associations, and you named quite a number of them.

A. I named the ones it has covered there.

Q. All those associations you named, are still operating, aren't they?

A. That I couldn't tell you.

Q. So far as you know those associations are still all functioning in all these various lumber industries?

A. So far as I know they are.

Q. Whatever the recommendations were of your Bureau,—and I don't know because there are 150 pages, I suppose I would have to read all of that to find out, wouldn't I—these seven or eight or nine associations that are referred to in the title page of the investigation are still functioning as associations?

A. I don't know that they are not.

Q. Now, if you desire to compare the two charts 19 and 21, one which compares the price of the product with the rough lumber, the cost of the rough lumber, and one which compares the price of [fol. 1479] the product with the other marketing and manufacturing costs, that can be done by placing the two charts together?

A. No, because they are on percentage basis and start out one hundred, whereas they should be component part charts, they should show the parts. The Barr chart is what you want.

Q. You are talking about a chart which shows quantities for the purpose of showing what the difference is between the price of the product and the costs of manufacture in order to see what the margin is which represents profit, that is what you are talking about, isn't it?

A. Yes.

Q. These charts are not designed for the purpose of determining what the margin of profit is.

A. I understood they were designed to show that the price of Maple flooring was not controlled.

Q. Precisely, but they are not designed to show whether the margin of profit at sometimes existed and at other times did not exist?

A. They don't show any such thing.

Q. They are not intended to show that, are they?

A. No.

Q. That could only be shown by a quantitative chart which would show as to each manufacturer his cost of manufacture, including his cost of rough lumber, the price he received at a given time and the margin between those two?

A. It could be shown that way, or as the average.

Q. Or as the average of all compared with the average of all prices, and what would be left would be his profit over a given time, or over a period of months?

A. Yes.

[foy. 1480] Q. This chart 19, however, does show a very close correlation between the amount of the price of the rough material and the price of the product, and that is what you would expect to find, isn't it?

A. If you mean by close co-relation—

Q. I mean that when the price of the product, when the price of the rough material went up, moved upwards, showing an advance to a higher percentage of price, that the price of the product moved upward?

A. That is generally true, the trend.

Q. The trend?

A. The direction.

Q. Now, you have criticized the chart upon which Mr. Gordon and Mr. Keehn have made an allowance for the purchasing price of the dollar, or the purchasing level of the dollar. It is true, isn't it, that a dollar today does not purchase what it purchased in 1913? That is recognized by everyone?

A. Yes.

Q. You don't have to be an economist to know that?

A. No.

Q. It is for the purpose of correcting these figures to represent that difference that this so-called correction for the purchasing power of the dollar or level, is made?

A. That is so stated.

Q. Now, there is, however, just preceding this chart another chart on which the same identical figures are platted?

A. What number is that?

Q. The chart which you were talking about is 24, but will you look at 23; there is the same chart without the correction for the purchasing power of the dollar, or the level of the purchasing power of the dollar, and I will ask you if you do not get exactly the same [fol. 1481] idea and the same co-relation from reading chart 23 that you do from reading chart 24?

A. Yes, you do for this reason: Chart 23 runs from one to five hundred for the space, and chart 24 runs from 1 to 300.

Q. That is the effect, in other words, of the correction?

A. Yes, as far as the space is concerned, you get the same effect.

Q. I am talking about the movement of the line, which is the

only thing we are interested in; we are not interested in anything else.

A. You mean the time they change?

Q. Yes.

A. Not the direction.

Q. Yes.

A. Do you mean the rapidity of movement?

Q. Yes.

A. They don't show the same rapidity.

Q. Where is there a substantial difference in the movement of the lines on those two charts?

A. No, that is right; they are substantially similar.

Q. So, you can disregard all this talk about the purchasing power of the dollar—I mean the correction for the purchasing power, and I mean you can disregard this statistical correction for the purchasing power of the dollar, and you can get the same result by reading chart 23 that you can by reading 24?

A. If you don't compare them with the other lines, the height or anything like that.

Q. We are talking about the movement?

A. The rapidity of trend?

Q. Yes, both rapidity and time?

A. Yes, I mean the exact time the change in direction occurred.

Q. You testified in looking at these exhibits 15 and 16, that exhibit 16 did not mean anything where you took a comparison of prices of the product, the index of the product price over a period [fol. 1482] of ten years; that the comparison of the index price of a large number of other commodities showed that the index price of the product was lower for the average of ten years than those other prices; that doesn't mean anything as you look at it?

A. As far as determining whether there is a fixed price or not—as far as determining whether there is control or not, it does not amount to anything.

Q. The same is true of 15?

A. Yes, sir.

Q. In other words, if one does not mean anything, the other does not?

A. Yes, sir.

Q. Isn't that exactly what Mr. Gordon and Mr. Keehn testified, that in their opinion it had no significance?

A. They did state it had no significance, but they were put in and so I commented on them.

Q. In other words, the price level of a given commodity as compared with the level of other commodities.—by that I mean the quantitative difference between two commodities, where one is not the product of the other, can have no significance in determining the fixation of price, the quantitative difference?

A. To me a chart of that description merely means where price changes occur in what direction they go, and we know where to look then to find out what made them.

Q. Yes, but where price changes occur and where they go is shown definitely by comparison of the index prices showing the trend?

A. Yes.

Q. Now you made some criticism of table eighteen because the comparison there, tables seventeen and eighteen, because the comparison was started at 1918. Mr. Gordon and Mr. Keehn explained, [fol. 1483] did they not, in their depositions, that it was impossible to start that comparison at an earlier date because the data was not available?

A. Which chart are you talking about?

Q. Seventeen and eighteen.

A. I made no criticism as to when they started out, no.

Q. You suggested that these charts differed from the others in that they did not start back to 1913?

A. Oh, no, what I said was they did not start at the same point in 1918. I might have said "1913" thinking that was the first year on this chart. If I did it was an inadvertence.

Q. That was because, as they explained in their depositions, the data was not available at the earlier period?

A. I am sure I did not make any criticism of the time.

Q. Of course you have got to have adequate data for two indices that you are going to compare, otherwise the comparison means nothing; you agree to that?

A. Yes.

Q. Now you indicated that taking chart 24 it did not show what Mr. Keehn and Mr. Gordon testified it showed, because during 1918, the latter half of 1918, the line indicating the price of the product levelled out instead of dropping, as it naturally had expected to do in response to a falling demand and increasing stocks. Do you recalled the explanation of that made in the testimony of Mr. Gordon and Mr. Keehn?

A. Oh, yes. Another reason is assigned, but that reason is not shown on the chart.

Q. Isn't it a fact that during the period in question there was a restriction upon building construction which practically eliminated during that period any substantial demand?

A. Are you speaking of 1918, 1919 or 1917?

Q. The latter part of 1918, yes, which eliminated practically all [fol. 1484] demand for a product such as Maple flooring. Are you familiar with that restriction?

A. Generally familiar with it, not the exact time it started.

Q. As an economist and statistician, what would you say the effect of such building restrictions would have upon the demand?

A. Decrease it.

Q. Decrease the demand. Now has it ever come to your notice as being a normal movement in business that where demand is very light, and there is practically, therefore, no movement of a given product, that there is no incentive to the manufacturer, particularly where that demand or lack of demand is caused by an artificial restriction such as a limitation upon building, which cannot be stimu-

lated, in other words, by new offerings at lower prices—is there or is there not a tendency for the price to level out and not to drop?

A. I recall no particular circumstances fitting all those descriptions.

Q. In other words, what causes ordinarily the manufacturer of a product, which is competitive, to lower his prices?

A. He needs the money.

Q. He wants to get the business, isn't that it?

A. There are a thousand reasons for lowering the prices.

Q. But the ordinary reason, I mean the reason which usually actuates a man in business, not special circumstances, such as financial distress or something, but we are assuming a normal business condition so far as the individual is concerned. He ordinarily lowers his price for the purpose of getting business, doesn't he, stimulating demand?

A. Are you speaking now of competition among a group of people, or are you speaking of them as one group?

Q. I am speaking about the ordinary situation.

A. I would say that as far as any one particular man is concerned, if there is more demand than the mills can supply, if he cuts the price he will get the demand. As a group it would be of no advantage to cut price, but to the individual it would.

[fol. 1485] Q. I am talking about the individual. If by cutting his price he sees he cannot stimulate the demand, his tendency is not to cut his price, is it?

A. He would take business away from the other mills if they did not cut their price.

Q. But if there is practically no business to be had by reason of artificial restriction?

A. Do you assume there was no business? Unfilled orders show quite a bit of business.

Q. I am assuming what is testified as being the fact, forty per cent against 100 per cent, when there was artificial restriction upon building, that the demand was at a low ebb and so shown upon the chart?

A. Yes.

Q. That coupled with the fact of this restriction, if in existence, would or would that not have the tendency to cause a man not to lower his prices in order to sell his product unless he was in need of money or for other special circumstances had to sell?

A. I really can't see any difference whether the supply was forty per cent or fifty per cent, as to whether he should lower his price, if he wants to sell his stock.

Q. In other words, you think it would make no difference in that situation that there was the artificial restriction upon building which cut off the major portion of the demand?

A. Why, I would expect the prices to fall under those conditions, certainly, not to keep a straight line.

Q. Have you prepared any charts to show how this product was affected, maple flooring, by the various elements which you feel enter into and are controlled in the determination of the fixation of the free movement of the price?

[fol. 1486] A. No.

Q. Or any tables?

A. No.

Q. In other words, as I sum up your testimony, it is practically to this effect: that the only way that you can determine whether or not prices have been fixed is to find out who fixed them and when they fixed and how they fixed them, is that it?

A. That is right.

Q. You have got to find the existence of that fixation agreement, either express or implied?

A. Well, I wouldn't like to go into the legal proof required, of course.

Q. I am getting at your ideas as an economist, as to how you would ascertain these things?

A. Yes, sir.

Q. That is your judgment?

A. Yes, sir.

Q. And that all of these other comparisons may be disregarded?

A. Now there is a peculiar twist in this, if I may state it.

Q. No, just answer that if you will.

A. State it again.

Q. All these other comparisons may be disregarded, so far as you are concerned, in ascertaining—

A. What comparisons do you refer to?

Q. I refer to the comparisons of the prices of the product with other prices, with different factors of production, with different costs of production, with production itself, with competing products?

A. No, I would not disregard them. As I stated before, I would investigate those, investigate the whole field, and at the end I would try to find out what had happened. I would not be a slave for these charts. These charts would merely be an indication.

[fol. 1487] Q. Sort of guide?

A. That is it, as to what to do—not what conclusion to come to.

Q. You wouldn't attach any conclusions to them?

A. I would not with these charts merely, no.

Q. Would you to any chart—that is, you are sort of against this sort of method of charting, and method of determining whether there has been an artificial price or not?

A. I think it has been greatly misused. I think it is permissible if correctly used, yes, and compares the correct elements in the correct way.

Q. Now, in answer to his Honor's question, you said that if there was an element of fixation which brought the price of a given product which was the subject of that fixation agreement or understanding to a higher level, that thereafter, other conditions being the same, you might expect that price to fluctuate in response to supply and demand, but upon this so-called higher level, as I understood it?

A. Well, I don't think that correctly represents what was said.

Q. That would assume, would it not, that there was a constant level of price which was above at all times what the price would be if it were controlled solely by the law of supply and demand?

A. His Honor asked that if it were constant. I answered that question.

Q. That is what I am getting at, your answer to that question of that constant advance or increase or increment above the level at which supply and demand would have otherwise fixed it. Now has such a situation come to your knowledge in the investigation of any of these industries, where any price at any time over a period of ten years was maintained at a constant level above supply and [fol. 1488] demand or the price which would be fixed by supply and demand?

A. I think I told you I never had been able to measure the exact part of the price due to different causes, and it would be impossible as a matter of fact.

Q. So that there was no such measure of constant advance, because it is impossible to measure in dollars and cents just the price which would be fixed by the law of supply and demand, is it not? I mean, looking back over the history of an industry you were not able to say at what price the product would have sold had it responded to the law of supply and demand?

A. Not in dollars and cents; we know whether it was higher or lower.

Q. Its relative position, but not its position in dollars and cents.

A. Oh, yes, measured in advance, whether you call it dollars and cents; I wouldn't name the exact—

Q. I mean, you couldn't look back over the prices charged in any given industry and say the price of fifty dollars per thousand contained in it, and all subsequent prices contained in it an element of ten dollars which was an artificial increment or advance in price, and that if the law of supply and demand had operated that price would have been forty dollars.

A. I will say we have never been able to do that.

Mr. Johnston: That is all.

Mr. Thompson: That is all.

Mr. Thompson: I thought these books had been marked but I see they were not.

Mr. Johnston: I took them away. Are you putting the whole books in evidence?

[fol. 1489] Mr. Thompson: No, certain pages; they have been given to the stenographer.

Mr. Johnston: You have the pages on there?

Mr. Thompson: It is marked in the back.

Mr. Johnston: Referring to the Barr chart may it be agreed without the necessity of putting anybody on the stand that number three and five are copies of Mitchell and Mitchell Brothers, who are the same concern, that is, owned by the same people and operated practically as one concern, the same sales manager.

Mr. Thompson: Yes. I offer in evidence next and ask to have marked as an exhibit, specimens of exchange of quotations reports of the Maple Flooring Manufacturers Association.

Mr. Johnston: Over what period?

Mr. Thompson: The first dated, September 16, 1914, and the last one May 17, 1916.

(Papers referred to were marked Government Exhibit 73 and received in evidence.)

Mr. Thompson: Also circular letter to members from the Secretary, dated July 13th, 1916, with reference to I. C. C., docket number 8131, and attached to that "Statement of the position of the Maple Flooring Manufacturers Association" in that matter pending before the Commission.

Also attached to it, transcripts of evidence given before the Interstate Commerce Commission in Re-I. C. C. number 8131, the evidence being that of Charles R. Abbott, and George Strable.

Mr. Darby: I think that was offered before and we objected to it. The statement made by Mr. Abbott would not be binding upon this Association, and is incompetent.

Mr. Thompson: I am offering these as having been circularized by the Association among the members.

Mr. Fowler: It is stated in the communication that it is from [fol. 1490] the secretary of the Association.

Mr. Thompson: It is sent out as a circular letter of the secretary.

Mr. Darby: It is wholly irrelevant and immaterial. If the secretary of the Association transmitted some portions of the testimony of someone to different members of the Association it would not be binding upon the Association or make it competent testimony or relevant here.

Mr. Fowler: I think that matter was presented before.

The Court: It may be received subject to the objection.

Mr. Darby: It says, "Enclosed please find copies of testimony of Mr. Abbott and Mr. Strable before the Interstate Commerce Commission at the hearing now in progress in Chicago regarding reclassification of lumber and lumber products," and was not adopted.

The Court: I understand. It will be received subject to the objection.

(Papers referred to were marked Government Exhibit 74 and received in evidence.)

Mr. Thompson: I offer a number of documents sent out from the office of the Association, documents and letters of various dates.

Mr. Darby: Are any documents in evidence merely because they were sent out by the secretary of the Association regardless of what they may be?

The Court: I don't know the materiality of these particular ones, of course, but it is true that the activities of this Association as represented by the distribution of literature and other matters may be important and may be material. Of course I know nothing about the substance of those.

Mr. Darby: These documents which range from 1916 to 1921 will be subject to the objection made in the earlier stages of the case. [fols. 1491-1496] The Court: Certainly.

(Papers referred to were marked Government Exhibit 75 and received in evidence.)

Mr. Thompson: And a financial statement of the Association dated July 15, 1922.

(Paper referred to marked Government Exhibit 76 and received in evidence. Other letters were marked Gov. Ex. 76A, and were received in evidence.)

Mr. Thompson: The next exhibit is correspondence between the secretary of the Association and various members, and dates between September 1st, 1916 and July 16th, 1923.

Mr. Johnston: We object to that on the ground that it represents prior transactions between members of the Association and not in relation to the Association or its functions, and it is therefore incompetent, irrelevant and immaterial.

The Court: It will be received subject to the objection. The same ruling has been made before.

(Letters referred to were marked Government Exhibit 77 and received in evidence.)

Mr. Thompson: The next will be some correspondence between various members of the Association.

Mr. Johnston: That will be subject to the same objection that we have made before.

The Court: Very well.

(Letters referred to marked Government Exhibit 78 and received in evidence.)

[fol. 1497] "Mr. Thompson: I, by error yesterday included in the exhibits one statement which I had previously told counsel we would not include. It has matters in it that have no bearing in the case, which they did not want to have in the record. I will withdraw Ex. No. 76 and there are a couple of other-, one annual Secretary's report and one letter which had not been introduced previously. I will ask that they be marked Ex. 76 so as to keep the sequence.

Mr. Johnston: The letter will be subject to the same objection, that is, as passing between individuals.

(Papers referred to marked Ex. 76 and 76-A.)

HORACE A. LEWIS, being duly sworn testified on direct examination as follows:

Direct examination by Mr. Thompson:

I am a special agent of the Bureau of Investigation of the United States Department of Justice and have been since April, 1918. I have been connected with an investigation by the Department of the Maple Flooring Manufacturers Association and have been doing work recently in the preparation of data for presentation here. Here are tabulations that have been made from the weekly sales reports of the

Association which are entitled Completed Transactions, Record of Completed Transactions, from which I have taken off the date, the name of the mill, the quantity of the lumber shipped, the delivered price, the average freight rate from which I have figured the actual freight allowance showing the net price of flooring f. o. b. cars at mill. The tabulations also show the commission and the deduction [fol. 1498] of the commission or the net price of flooring at the cars, for 13/16th by 2¼ inch in the three grades, clear, number one and factory, standard lengths. In making the tabulations we have used all reports that were in our possession for 1920 with a few scattering dates at the latter end of the year; practically a complete set of 1921 reports, with possibly six or seven omissions and practically the entire year of 1922 and the first six months of 1923. For 1920 I tabulated the weeks ending February 28, March 13, April 17, August 7, August 28, September 25 and December 25. For 1921 there were omissions of May 15, October 15, December 24 and December 31. For 1922 there was missing the report of January the 7th. There was a complete set of reports for the first six months of 1923, namely, until and including the week ending June 30, 1923. In making these tabulations I made the freight deductions by taking the freight rate through, decoded by their freight rate code and checked up by a multiple of two thousand pounds to the thousand feet and thus arrived at the actual freight allowance. This method reduces the prices not to a strictly f. o. b. mill basis for the individual lumber but f. o. b. actual basis using the rates given in the Association rate book. For the year 1922 and one or two dates in 1921 and a few of the earlier dates in 1923 such records as were in possession of the Government prior to the Grand Rapids proceedings here were figured in the three grades, factory, number one and clear, and such records as have come into the possession of the Government since this trial we figured in the clear grade only because of lack of time. On all the records I have mentioned, we have made a recaption tabulation [fol. 1499] on the grade of clear 13/16th by 2¼ showing the number of sales at each given price, the total number of feet above the base price as advertised by the Association to its members with amount at the base price or average cost and the total amount of feet above the average cost, above and below and at the cost. The base price—possibly I have used the wrong word—we have figured the price as that which has been at intervals through bulletin letters and notification of the Association forwarded to members as the average cost of certain quarters, having an average cost for the first quarter, second quarter, third quarter, fourth quarter and so on. I did not make all these tabulations myself, they were all made either by me or under my supervision. I have checked them over and am satisfied that they are as reasonably correct and as correct as it was possible to get them. You told me that I had made one error this morning. In addition to that, there is confusion between the price on some sales reports as a mill sale and some as an A. I had figured rate A or rather had interpreted rate A as one dollar actual freight rate for the reason that there was no interpretation in their code books of A: F decoded as being a dollar and a quarter actual freight, I rather

guessed at the A as one dollar. I have since found out that A means f. o. b. mill or Cadillac base and there are a very few cases, I should say not more than a dozen, where I have deducted a dollar where I should not have done so.

Mr. Thompson: We offer these in evidence.

Mr. Johnston: We object to them on the ground of their competency, materiality and relevancy, further upon the ground that they are not shown to be correct tabulations of the documents themselves [fol. 1500] selves which are in evidence and which speak for themselves but are the computations of this witness after making what he conceived to be an allowance or proper allowance for the actual freight and not the actual freight as it was shown by any records.

The Court: As I understood the situation they will be received subject to the objection.

(Marked Gov. Ex. 79.)

Cross-examination.

By Mr. Johnston:

"Q. As I understand you, you have taken the weekly sales reports and do those weekly sales reports show the quantity sold by each member separately?

A. They show the individual sale.

Q. There were at times during the period that you made this investigation there was nothing to indicate the individual sales, was there, that is, the individual who made the sales?

A. Yes, there was, I think there were a few copies where they were made by maps, at such times I have grouped them as groups.

Q. The attaching of the index numbers did not occur during all of that period?

A. With very few exceptions.

The Court: Is that true, Mr. Johnston?

Mr. Johnston: Yes, your Honor.

The Court: I understood that the index numbers were attached up to July this year.

Mr. Johnston: No, not continuously, the index numbers were not put on until some time in 1921.

Mr. Keehn: They were omitted I think in January, February, [fol. 1501] and March, 1921 or '2, I forget which.

Mr. Johnston: There was a hiatus there?

A. I can give you the actual number if you care to that were not tabulated by the individual number."

All the weekly reports from which these tabulations were made are in evidence so that my tabulations can be checked as to accuracy.

"Q. We will take the first one that appears here, you have said dated March 23, quantity one thousand, delivered price \$170, that is, you got that item of \$170 from the weekly sales report?

A. Yes, sir.

Q. Then you say Average Freight Rate 31 cents?

A. Yes, sir.

Q. That is the Cadillac rate?

A. It was the rate that was published on the weekly report.

Q. Freight allowance \$6.25?

A. Yes.

Q. That is figuring at the Cadillac rate?

A. Yes, sir.

Q. Have you heard the testimony here during the course of this examination?

A. No, sir.

Q. Did you know, as a matter of fact, that every member of this Association when he sells his product f. o. b. point of destination as most shipments are made in that way, receives from the customer only the amount of the price less the actual freight from point of shipment less the commissions, if any there be?

A. Yes, sir.

[fol. 1502] Q. So that the actual amount under those circumstances which the shipper would receive would be somewhat different from the amount which you have here, would it not?

A. You mean there would be a difference between what the shipper would receive or what the buyer would actually pay on that Michigan base, Cadillac base?

Q. I mean there would be a difference between the amount which the shipper, the owner of the flooring, would receive and the amount which you have here as his theoretical net receipt which as I understand with that rate as I figured it out there is practically f. o. b. Cadillac. Many times the rate of the actual shipment differs from the Cadillac rate.

A. I understand that.

Q. You have taken no account of that?

A. Not at all. I have given you f. o. b. Cadillac base price.

Q. Or of the price that the shipper under no circumstances would receive substantially less represented by the difference between the actual base rate and the actual freight rate?

A. Those figures refer to f. o. b. Cadillac base.

Q. Only to Cadillac base?

A. Yes, sir.

Q. In that respect they don't represent then what the shipper actually received unless the actual freight happened to be the Cadillac price?

A. That of course I have no knowledge of, I am simply going into freight rate books here and giving you f. o. b. Cadillac, Michigan price.

[fol. 1503] Q. That would be true if there is a variation in freight rate?

A. I should say that would be true.

Q. The commission that you have taken off is the commission that is shown upon the sale?

A. It is.

Q. That is the only basis you have of knowing whether commission was allowed or not?

A. Yes, sir.

Q. So under the last column you have put the heading, net f. o. b. cars at mill, that means the net price after deducting the so-called Cadillac base rate plus the commission?

A. Absolutely.

Q. And not the net price after deducting the actual freight plus the commission?

A. Cadillac base less the commission.

Q. Is the so-called summary which you have made, is that what appears at the bottom of each one of these sheets or is that on a separate sheet?

A. The recaption sheet shows on the top of each date.

The Court: When you say recaption, do you mean recapitulation?

A. Yes.

Q. I show you one of these sheets, to be sure we are talking about the same thing. That is one of the recaption sheets, is it?

A. Yes.

Q. For how many sales did you make these recaption sheets?

A. They were made—I can give you those that are eliminated or I can tell you in an abstract way.

Q. For what portion of the period that you have covered by your compilations taken from the sales report did you make these recaption sheets, the same period?

[fol. 1504] A. There were a few of the periods in the early part of 1921 where the figures were so few it didn't seem necessary to make the recaption sheet, that they were not made, but from June, 1921 to date they are complete and there are a few prior to that date, perhaps a half dozen all told.

Q. You say you have taken of course the clear?

A. The clear in all cases, factory and number one in others.

Q. I suppose you took that because you discovered that the variation in clear was not so good as the variation in number one and factory?

A. No, sir, that was not the reason.

Q. Did you just happen to take clear, was that just an accident?

A. No, that wasn't the reason, I took clear because I believed it to show greater percentage than the other two grades of maple and shows 13/16ths by 2¼ because I believed that to show the major part of the flooring manufacture.

Q. You didn't have in mind the fact that the clear grade varied less than the other grades?

A. Absolutely not.

Q. Or than the other sizes in clear?

A. Absolutely not.

Q. Taking one of these recaption sheets as an example, you say 13/16ths by 2¼ was 90 f. o. b. cars at flooring mills as shown by average cost chart dated 5/21/21. That price of 90 is the average

cost shown in the average cost chart, you took that from the rate book?

A. Yes, sir.

Q. Where the average cost chart then appeared? Then you compiled from the record of completed transactions report of sales [fol. 1505] made the week ending July 30th, 1921, you have attempted there to take each sale and the price, at what price the net f. o. b. delivered price as shown by the record of completed transactions issued by the Association weekly; this price which you put in here is not the net f. o. b.?

A. The first price as show on that tabulation there is the price as shown by the weekly transactions of the Association Bulletin.

Q. I am referring now to this recaption sheet.

A. I beg your pardon.

Q. We have passed that other, look at that again.

A. I thought you were talking from the second sheet. These prices here are f. o. b. Cadillac minus the freight rate, the actual freight paid or charged by the Association as shown by their freight rate of average.

Q. In other words, they are the net prices arrived at in the same way you have arrived at them in the other tabulation?

A. Absolutely.

Q. And is deducting the Cadillac base rate?

A. Yes.

Q. And deducting commission?

A. No.

Q. You haven't deducted the commission?

A. Those are not deducted.

Q. The commission is not deducted from the statement?

A. No.

Q. Then they are the price?

A. You turn to your second page you will see although we have deducted the commission it is after we arrived at the factory f. o. b. [fol. 1506] mill price, the price f. o. b. cars at mill, then the commission and the net prices f. o. b. mill is minus the commission.

Q. But on this first sheet of this recaption—I want to get this straight—

A. I am telling you where I derive those figures from.

Q. The first sheet of this recaption you have the delivered price less the Cadillac base rate?

A. Yes.

Q. That is all?

A. That is all.

Q. That is how that figure is arrived at?

A. Yes, sir.

Q. Then you have put the total footings out there?

A. Yes, sir.

Q. Then in the first group you have put those prices which were above?

A. Above the average.

Q. Above the average cost price?

A. That is less money.

Q. Which were below then?

A. Below? I put them on the sheet above, but the lower prices were above.

Q. The first group in the recap contains the prices which were below the base or the average cost price?

A. That is right.

Q. You called it base, it is called in the book the average cost price.

A. The average cost.

[fol. 1507] Q. That you expressed in a percentage?

A. Yes, sir, total number of feet and percentage.

Q. By total of feet you have taken the total number of feet in each week's report of sale and then the percentage that was above and the percentage that was below you carried that percentage out to the side, that is it?

A. Yes.

Q. And then you have shown on the lower group those prices which were above?

A. Yes, sir.

Q. So that you show on this group for instance which I picked up at random for the week ending July 30, 1921, that the sales ranged in prices from \$81.50 to \$112.50 covering that week of July 30th, 1921?

A. Yes, sir.

Q. And on this particular sheet 25% of the sales, 25.6 of the actual sales were at prices below the cost?

A. Average cost.

Q. The average cost and 8 and 6 were above?

A. 65.8.

Q. You say you have personally checked over the accuracy of all of these percentages and all of these figures?

A. Yes, sir.

Q. How long have you been at it?

A. The making of these reports?

Q. Yes.

A. I started in the early part of November after the Grand Jury proceedings in this Court, I think the 6th of November, the Grand Jury proceeding here, was that on the 6th?

[fol. 1508] Q. Some time in November.

A. It was the early part of November.

Q. And you have been at work at that since?

A. Yes, sir.

Examination by Mr. Thomson:

Q. You made a tabulation from the 23 sales reports of the total amount of sales of the three grades?

A. I did, yes, sir.

Q. Up to October 5. Will you state what the amounts sold dur-

ing that period of each grade are respectively and the percentage to the total represented by each?

A. You want the individual sales or the total?

Q. No, just the total for the period, of the amount to each grade sold and the percentage that is of the total sales for this period?

A. There was 69,942,673 feet sold of flooring. Of this amount there was 52,667 thousand feet of 13/16ths; in the clear there were 28 thousand; in the number one 14 thousand and in the factory 9 thousand feet showing percentage of the clear of 54.6, of the number one of 27.2 and of the factory 18.2.

Q. Did you read those figures correctly?

A. Yes, sir.

Q. It should be millions instead of thousands?

A. Yes, 28 millions clear. I had them figures in thousands.

Q. Were your instructions to make these tabulations covering all three grades?

A. They were.

Q. Was there any other reason except the lack of time why you didn't make them for all?

[fol. 1509] A. None at all.

Recross by Mr. Johnston.

Q. Did you find from examining these weekly and monthly sales reports that the proportion between clear and number one and factory varied quite considerably during different periods and different years.

A. Their average was practically as I have given it although there were of course variations by weeks.

Q. There were periods of time during which the factory ran considerably more than at other times, number one ran considerably more than at other times?

A. They varied every single week.

Q. Did you make the compilation for other years as to those percentages?

A. No, sir.

The Court: I think that I noticed from the exhibits that were introduced yesterday that as the price rose the amount of factory sold increased.

Mr. Johnston: That is true.

The Court: The lower priced lumber was moving more readily than the higher price?

Mr. Johnston: That is only natural of course.

The Court: And as the prices decreased the opposite is true.

Q. You didn't make this calculation for other years than the first six months of 1923?

A. The first six months of 1923, that is all we had time for.

The Court: If you have copies of those, I wish you would let me [fol. 1510] have them and then I want the witness to just take a sample of each one and explain it so that I may understand it.

Mr. Fowler: Mr. Thompson was going to do that.

The Court: Very well, so that I am going to get it, that is all I want. Of course it is utterly impossible for me to comprehend it not having the figures before me.

Mr. Thompson: The method taken on the sheet was to take the sales report and do down, following each item, and as soon as an item was found of 13/16 x 2-1/4 Clear that item was taken for transference onto the compilation sheet, and on the compilation sheet showed all of the data that appears on the sales report; that is, the date of the sale; the number of the mill making the sale; the quantity sold; and the delivered price and the freight rate, all being taken directly from the sales report. Then on the basis of the freight rate shown on the sales report and the freight rate books, the freight allowance Cadillac, the freight allowance was computed and was put in the column entitled "Freight charge." Then was shown the commission, which was taken directly from the sales report. Then it shows the Factory price, which was the delivered price, less the freight charge.

Mr. Johnston: And less the commission.

Mr. Thompson: No, I think the commission was deducted, but that was not the method desired with the great majority of them. What is shown as net factory price is the delivered price less only the freight allowance from Cadillac. That is what is shown under net factory price, but on most of these, it is the net.

The Court: Why is that?

[fol. 1511] Mr. Thompson: Because in all the Minimum Price Plans and basis, and in the freight rate books is shown that the commission could be allowed from the minimum price established; that is, if under the minimum price plan or basis there was an average cost or a minimum price of \$100, f. o. b. Cadillac, if the sale was made say, at \$104, and the delivered price to that point was \$4.00, they could deduct the \$4.00 freight, which would leave the \$100. That would be in accordance with such minimum price plan.

Mr. Johnston: The commission would be allowed from that.

The Court: I understand.

Mr. Thompson: The purpose of this compilation is not, of course, to show—

The Court: That would be a proper computation if we were arriving at what the minimum price was, but in arriving at the price at which this commodity was sold, it would not be a correct computation, would it?

Mr. Thompson: Not the actual realization, of course.

The Court: If your purpose is to show whether or not there was a uniformity of price, or prices charged, by the members of this Association, your computation would not be correct, would it?

Mr. Thompson: I think it would, your Honor, as to the delivered prices charged.

Mr. Fowler: Let me explain our theory. Our contention is that this tends to prove that they had in mind all the time this supposed average cost valuation, they call it, or trend. Now, under their regulations, that is, under that Minimum Price Plan, under

the minimum price basis, they were permitted to deduct the commission if they wanted to, that was optional with them. If they saw fit to allow a commission, that constituted the basis, and these estimates were made with reference to that basis, they were permitted to deduct the commission if they wanted to, that was optional with them. If they saw fit to allow a commission, they constituted the basis, and these estimates were made with reference to that basis, our contention being that that was the thing they had in mind, and tried to observe; some allowed a commission, some did not. That was a computation they made themselves. It is upon that theory that all these calculations are made.

The Court: Is not this the situation under the theory of the Government: that when the minimum price plan or minimum price basis was in operation and in force, competition was not eliminated, but was limited to prices above that minimum so fixed?

Mr. Fowler: Yes, and including also the commission if they saw fit to allow it.

The Court: I understand but you arrive at the minimum price which is allowed under either the minimum price plan or the minimum price basis by taking into consideration the commission which might be allowed, less that commission would be the actual minimum price.

Mr. Thompson: No, your Honor, that is not the way it is calculated.

Mr. Fowler: That was not the theory of the minimum price plan. The theory was to fix that as a minimum basis, theoretically, but they could even go two dollars below that, if they saw fit, but this [fol. 1513] was optional. The real basis they were looking for under that plan was the amount computed.

The Court: To illustrate, suppose at any given time it is found that a hundred dollars per thousand would be the minimum price,—

Mr. Fowler: The average cost as they call it.

The Court: I understand. I don't care what you call it—if a hundred dollars would be the minimum price at which the members of this Association were expected to sell their lumber, then any addition to that, or any deduction from that the members of this Association were permitted under that plan to pay a commission of \$2.00 per thousand; that would make the minimum price which was allowed or permitted \$98.00, wouldn't it?

Mr. Fowler: That is, it was optional.

The Court: Certainly. Any amount above that was unlimited at all times.

Mr. Fowler: That is correct.

Mr. Thompson: I think if your Honor will turn to the record for January 8th, 1921, you will see what we had in mind and why. Your Honor will remember three sales reports were introduced in evidence which showed, in addition to the other data, the minimum price basis, price, on these tabulations made from that, that is also included. You will notice the first sale, the delivered price was at \$108.50. The Cadillac freight rate computed was \$8.50, leaving as

the Cadillac price \$100.00. Now, \$100 is the minimum price established f. o. b. Cadillac, under that January 6th plan. We note also that \$108.50 is the delivered minimum price. So, it appears [fol. 1514] clearly from that that the minimum price was established regardless of any allowance that might be made for the commission, so that it would not be proper to deduct the commission and say that \$98.00 was the price for that sale under the Minimum Price Plan. The Minimum Price Plan was \$100 irrespective of whether or not the commission was allowed.

The Court: I confess I can't follow you. If this plan allowed a minimum price of \$100 per M feet, and in addition to that the member was permitted to sell and pay a commission of \$2.00, which is set forth in the plan itself, I cannot see why then the net minimum price at which a member would be permitted to sell, would not be \$98.00.

Mr. Fowler: I believe your Honor is absolutely correct about that, when you go to compute and determine whether or not they had in mind a special line, that ought not to be considered, because that was left entirely optional. It might apply to one fellow and would not apply to the next.

Mr. Thompson: As a matter of fact, it would make very little difference whether it was computed the other way or not, because practically all the sales allow commission, and practically all the commissions are uniform.

Mr. Darby: That is not the fact. There are some dollar and a half, some two dollars and some even three, I believe.

The Court: Take this first item upon this January 8th statement, and not taking into consideration the commission you find that the actual sale was made at a price lower than the minimum price permitted, but if you take into consideration the commission, it was a price realized above the minimum price.

Mr. Thompson: Is your Honor correct on that? I thought the [fol. 1515] first sale was just the minimum price.

The Court: I have it here, December 31st, mill number 24, 4 M feet, the delivered price \$108.50; average freight rate 42¢; actual freight rate allowed \$8.50, price f. o. b. car at the mill \$100.

Mr. Thompson: That was f. o. b. that made the minimum price.

The Court: Then you follow the minimum price basis, \$108.50 is figured the delivered price.

Mr. Thompson: It was just the same as the delivered price of the sale.

The Court: Sure. Then the commission allowed was \$1.00, which reduced by \$1.00 the amount received by this mill.

Mr. Fowler: According to your Honor's theory, the minimum would be \$98.00, they were selling a dollar above it.

The Court: They were selling a dollar above the minimum. That is not my theory or anything of the kind, but what the actual figures show in this case, if they show anything along that theory. Taking the second item, where no commission was allowed you would have a sale at the minimum price, where as in fact the actual sale on the first item, was at a dollar below the minimum price.

Mr. Thompson: Well, it would be if the minimum price were computed that way, your Honor, but we have merely taken that method followed in the computation. As I say, it is my impression it would make very little difference in the record whether one method or the other were followed. We started out first deducting the com-[fol. 1516] mission, and then showing the net factory price, less the commission. We found from these minimum price plan statements that that was not the method they followed, so we changed.

The Court: Very well. Mathematics is an exact science.

Mr. Fowler: I wish to call your Honor's attention to this Minimum Price Basis.

Mr. Johnston: Which one, The one in force about two weeks?

Mr. Fowler: Yes, reading from Article IV:

"The following Minimum Price Basis is hereby established, subject to change from time to time in accordance with Article II and III. "This specified under "Commissions:"

"A commission not exceeding two dollars may be allowed to your own registered special representative, or a commission not exceeding one dollar and fifty cents may be allowed to registered wholesalers and commission men. That is purely optional. Our idea is that what they really had in mind was the basis; every man making a sale had in mind first the basis, and then he determined whether he would allow the commission or not, and the only way we can compare it is to compare it with the basis.

Mr. Thompson: In other words, it seemed to us the theory was that the commission was practically absorbed as a part of the selling expense.

The Court: I don't know that it makes very much difference except in this: that in any event it is against the Government. This method of computation is against the Government.

Mr. Johnston: On one theory, but in their favor in another. It is against them on the theory of the Minimum Price, but it is in [fol. 1517] their favor on the theory of variation, because the prices show greater variation if you take off the commission.

Mr. Fowler: We are not insisting on uniformity.

Mr. Johnston: Well, you couldn't on those figures.

The Court: Let us proceed.

Mr. Thompson: You wanted me to explain how the recap. sheet was made. I have one here of December 30, 1922. Now, at the top of each one of the recap. sheets, is a statement of the last termination of average cost put out by the Association for the 13/16 x 2 1/4 Clear Maple flooring. On this one, it was \$95.00 f. o. b. cars at flooring mills, as shown by Association report dated October 25, 1922, captioned "Average Cost, Based upon three test runs of 1921." Then follows the computation made from the other computation. They merely went through and drew off the number of sales and the total feet of those sales at each price. So, this shows that during that week there was one sale of this time at \$93.00 a total of 78,000 feet;

One sale at \$94.00, a total of 15,000 feet;

One sale at \$95.25, a total of 7,000 "

One sale at \$94.50, a total of 14,000 "

The total average cost established was \$95.00. This constituted a total of 104,000 feet or 11.4% of feet sold that week—the total footage of that item.

Then it appeared that there were 33 sales at \$94.00, the average cost price; that represented 668,619 feet or 73.6% of total.

Then follows the tabulation of the sales above \$95.00 costs:

[fol. 1518] One sale at \$95.25.

Four sales at 95.50.

One sale at \$95.75.

Two sales at \$96.00.

One sale at \$98.00.

One sale at \$100.25.

One sale at \$100.50.

One sale at 104.00.

The total footage was 135,300 feet or 15%.

The Court: These sales, above and below have not been averaged as to price.

Mr. Thompson: No, sir.

The Court: As to the average price, either above or below.

Mr. Thompson: No, sir; that would require another computation; there are many elements entering in. For instance, many sales are shown as mill sales, which would be practically retail sales made at the mill, and those were all kept out of the tabulation. And no attempt was made to differentiate between the prices obtained by some of these mills, which the evidence shows normally obtained higher prices than others, because of superior quality. We merely took every price for those items appearing on the sales report and made a comparison on that basis without going into other controverted matters.

The Court: Now, if you had taken into account, commissions in arriving at the minimum price, which would be permitted, you would have probably on this sheet—I am simply stating probably,—on this sheet practically no sales, perhaps no sales below the minimum price.

Mr. Thompson: No, considering that all of those at \$93.00 had the commission deducted, of course, all the sales would have been at least equal to the minimum price.

The Court: Every sale that was made which you have figured [fol. 1519] at \$93.00, there was an allowance of \$2.00 commission.

Mr. Johnston: The net receipt was \$93.00, if it was \$2.00. Of course it shows on this list that some were \$1.50, some \$2.00 and some only \$1.00.

Mr. Thompson: Those where the commission was deducted, those would have all been \$95.00.

Mr. Johnston: How can you tell whether they were or were not?

The Court: This sheet, as I understand it, the first page of this series of sheets, is the recapitulation, or the computation of the percentages?

Mr. Thompson: Yes, sir.

The Court: The subsequent sheets show the actual sales?

Mr. Thompson: Yes, your Honor, that is the one that is taken directly off the sales reports. That one you have in your hand contains tabulations from the sales reports in the No. 1 and the Factory also, but as I stated, on account of the lack of time—this was a greater task than anticipated—we were not able to complete that.

The Court: Have you any other recapitulation of the entire period?

Mr. Thompson: Merely in rough form, your Honor, merely of percentages.

The Court: Of course this is not of very much value unless you complete it; you have left the Keystone out of your arch.

Mr. Lewis: We did not have time for that, your Honor, as to No. 1 and Factory.

[fol. 1520] The Court: I mean the Clear. Have you a recapitulation of the entire period for Clear?

Mr. Lewis: Yes, sir.

Mr. Thompson: Perhaps we had better introduce this in evidence. That is a recapitulation of the percentages of percentages at, above and below.

Mr. Johnston: Over what period?

Mr. Thompson: The entire period.

Mr. Newman: What year?

Mr. Thompson: 1921 and 1923—only the first half of 1923.

Mr. Fowler: You better have that marked.

Mr. Johnston: I would like to know something about it.

Mr. Thompson: We will put on Mr. Harris and ask him about it.

A. P. HARRIS, being sworn on behalf of the Government testified as follows:

Direct examination.

By Mr. Thompson:

Q. What is your occupation?

A. Special Agent for the United States, Department of Justice.

Q. Have you taken part in the calculation and tabulation of this exhibit which has been introduced as Sales Reports?

A. Yes, sir, I have.

Q. I will ask you to state what that chart is, and what it shows and how it was prepared?

A. A table prepared from record of completed transactions of weekly sales reports reflecting Association's average cost chart f. o. b. [fol. 1521] flooring mills. Also table of weekly sales of 13/16 x 2 1/4 Clear Maple Flooring and the percentages of the total sales as sold below, at and above the average cost charts. This table shows the record beginning with January 1st, 1921, running through 1921, 1922 and the first six months of 1923, and it shows the base or

average cost chart numbers, and at the end of each week during this period it shows the percent of the footage as sold below this average cost chart price, the percentage sold at, and the percentage sold above. It also shows the total footage in thousand feet only of $13/16 \times 2\frac{1}{4}$ Clear that was sold during that week. It gives that data for each week during that period.

Q. No average of those percentages has been made?

A. No, no average.

Q. It merely shows for each week?

A. It shows for each week. There are a few of the weeks during 1921 that we did not have time to complete in the average percentage—that is, the percentage at, above and below is not shown.

The Court: Then this is nothing more or less than what is shown here.

Mr. Thompson: Yes, your Honor, merely tabulated.

Mr. Fowler: A resume.

The Court: It does not seem to be even a resume; it is merely a tabulation of each week.

Mr. Johnston: A tabulated percent.

The Court: But it is all contained here, contained exactly as you [fol. 1522] have it there, except that this is all put on sheet.

The Witness: Yes, it is kind of a chart so you can get at it at one glance.

The Court: What I inquired was, whether you had made a computation or was this; whether you have then summarized these weekly tabulations so as to get the percentage of the whole during the entire period?

Mr. Thompson: No, your Honor, that has not been done. Then this does not cover what your Honor desired?

Mr. Fowler: We will put it in.

Mr. Thompson: I don't think it shows in full.

Mr. Fowler: That shows it in a moment instead of going through these things.

Mr. Thompson: I will offer it then.

The Court: Very well.

(Paper referred to was marked Gov't Exhibit 79.)

Mr. Thompson: The Government rests.

Mr. Johnston: I would like to recall Mr. Keehn for one or two questions that have been brought out in the rebuttal.

The Court: Very well.

Thereupon the defendants introduced the following testimony, and the following proceedings were had.

GEORGE W. KEEHN again on the stand.

Direct examination.

By Mr. Johnston:

Q. In one of the letters read this morning, written by you I think some time in 1921, reference was made to audits being made by one of the members of your office staff of the weekly sales reports, or the [fol. 1523] record of the members as to weekly sales reports at their various factories?

A. Yes, sir.

Q. Have any such audits been made, and are any such audits made under the present Articles of Association, those adopted January 1, 1922?

A. No, sir; no audits of any kind are made of the books of the members of the Association, or of their reports of weekly sales, shipments or any other data.

Q. Nothing of that kind has been done or is contemplated under the present organization, of January 1, 1922?

A. Nothing of that kind is done, or is contemplated to be done.

Mr. Johnston: I think that is all.

The Court: I take it there is nothing further on either side, if not, the proofs are closed.

Mr. Johnston: There are some exhibits, if the court please, that were introduced that do not seem to have been marked, I assume there will be no difficulty in having them marked.

The Court: They should be marked.

Mr. Johnston: One of our exhibits has evidently been misplaced, we cannot locate it. Mr. Keehn wants to compare those figures, I had forgotten that, with respect to production capacity, if the court will remember.

Mr. Fowler: Did he find some mistakes?

Mr. Johnston: Yes, he found some mistakes, several hundred thousand feet, two different weeks, in your calculation.

The Court: One offsetting the other?

Mr. Johnston: No, but they are not material, a couple of hundred thousand feet.

[fol. 1524] Further Examination of Mr. Keehn.

By Mr. Johnston:

Q. What have you found as a result of your compilation of the figures which you have and which the Government obtained as to the production of non-member mills?

A. We have made a complete statement of the production and manufacturing capacity of the members of the defendant Maple Flooring Manufacturers Association, and of the non-member manufacturers of Mable, Beech and Birch flooring, and the data regarding production has been compiled from the statements made by the De-

partment of Justice, and we have added to that one or two other reports which came in to us, which were not submitted to the Department of Justice, with a view of getting a complete tabulation of the whole thing. Then, we have a statement of the manufacturing capacity of the members and the non-members, which is compiled from data furnished to us by non-member manufacturers, because the Government's questionnaire did not go into the supplying of data regarding manufacturing capacity.

Q. How many non-members did you secure that data from?

A. I think, if I read that, it would be very simple.

Q. Very well.

A. The year 1922. We have columns of "Production, Members, Non-members." Twenty-two members produced of Maple, Beech and Birch flooring 148,313,000 feet; 58 non-members who reported produced 61,317,000 feet. The percentage produced by the members of the Association is 70.7%; by the non-members 29.3%, the total being 209,630,000 feet. The manufacturing capacity of the 22 members of the Association 158,400,000 feet; 38 non-members who reported their manufacturing capacity 238,610,000 feet, making a total capacity of 397,010,000 feet, of which the Association represents 39.9% and the non-members 60.1%.

For the year 1921, our 22 members produced 107 million—

The Court: It is hardly necessary to repeat.

Mr. Johnson: No.

The Witness: We did not endeavor to compile data for the year 1918, because it was somewhat incomplete and we could not get a very careful analysis of it, but this manufacturing capacity is taken from the letters which the non-members wrote to us and which we have entered in our statement just as reported to us.

Mr. Johnston: We will offer these tables. They are comprised of three sheets and we will offer them as one exhibit. (Papers referred to were marked Defendant's exhibit QQ.)

The Witness: In Mr. Hughes' tabulation, we found one or two slight clerical errors, which would not of course affect the percentage.

Mr. Johnston: Is that all, Mr. Keehn?

Mr. Keehn: Yes, that is all.

The Court: Now, is that all, gentlemen?

Mr. Thompson: I believe so, your Honor.

Whereupon both plaintiff and the defendants rested, the evidence was closed, and the cause, after argument, was submitted to and taken under advisement by the court.

[fol. 1526] ORDER SETTLING STATEMENT OF EVIDENCE

Be it further remembered that the foregoing was all the evidence and testimony offered, admitted or excluded, and all the proceedings had on the hearing of said cause, which do not already appear of record herein, with the exception of those certain exhibits therein

mentioned but not incorporated therein; that the said exhibits mentioned but not incorporated in the foregoing were omitted pursuant to stipulation of the solicitors for the respective parties, and this court has, by order entered on the 10th day of March, A. D., 1924, directed that the exhibits mentioned but not incorporated in the foregoing be transmitted to the Supreme Court of the United States, along with the transcript of record herein.

Be it further remembered and certified that the foregoing statement of evidence was lodged in due time with the Clerk of this court, and that due and regular notice of such lodgment and of the time of the proposed settlement thereof was given to the solicitors for plaintiff; and it appearing that the said statement, supplemented by the exhibits which this court has ordered to be transmitted to the Supreme Court of the United States, is true, complete and properly prepared, it is hereby approved, settled and allowed as a true, complete and correct statement of the evidence introduced in said cause in narrative form, with the exception of parts of the testimony of certain witnesses and the entire testimony of other witnesses, which by agreement of the parties and the direction of this court, were reproduced in the exact words of said witnesses.

[fol. 1527] Inasmuch as the matters above set forth do not fully appear of record in this suit and the defendants pray that the same may be certified under the hand of the Judge of this court and thereby made a part of the record in said cause, it is certified accordingly this 10th day of March, A. D. 1924.

C. W. Sessions, Judge of the District Court of the United States for the Western District of Michigan, Southern Division.

[fol. 1528] DISTRICT COURT OF THE UNITED STATES

[Title omitted]

NOTICE OF LODGMENT—Filed Mar. 10, 1924

Please take notice, that a copy of the statement of evidence prepared by the defendants to be used on the appeal in the above cause was duly lodged with the Clerk of the District Court of the United States for the Western District of Michigan, Southern Division, pursuant to Rule 75 of the Equity Rules of practice, on the 26th day of February, 1924, and that defendants will, on the 10th day of March, 1924, at 9:30 A. M. before his Honor Judge Sessions, at Grand Rapids, Michigan, ask the Court to approve the statement of evidence in order that it may be filed and become a part of the record for the purposes of the appeal.

Travis, Merriek, Warner & Johnson, Attorneys for Defendants.

Service of a copy of the above notice accepted and acknowledged this 27th day of February, 1924.

Edward J. Bowman, Attorney for Plaintiff.

[fol. 1529] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION RE TESTIMONY—Filed Mar. 10, 1924

Come now the appellants in the above entitled cause, by their solicitors Travis, Merrick, Warner & Johnson, and Newman, Poppenhusen, Stern & Johnston, and present their motion to the court and show that in the preparation of the statement of the evidence and of the record in the appeal of this cause, counsel for appellants and appellee have agreed that certain portions of the testimony of various witnesses, and all the testimony of certain other witnesses should be reproduced in the exact words of the respective witnesses in order that a proper presentation of the case may be made to the Supreme Court of the United States. That accordingly the appellants have prepared, with the assistance and approval of the appellee, a statement of the evidence herein, wherein most of the testimony is set forth in narrative form, and those portions which counsel have [fol. 1530] deemed essential to set out in the exact words of the witnesses are so set forth in each case.

Therefore appellants pray the court to grant this motion and to direct that said testimony be set forth in the record as prepared by the appellants with the advice and approval of the appellee.

This the 10 day of March, A. D. 1924.

Travis, Merrick, Warner & Johnston, Newman, Poppenhusen,
Stern & Johnston, Attorneys for Appellants.

[fol. 1531] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER RE TESTIMONY—Filed Mar. 10, 1924

On motion of appellants made to this court and the consent of the appellee, it is hereby ordered that so much of the testimony as has been reproduced in the exact words of the witnesses in the statement of evidence prepared by appellants, with the advice and consent of the appellee, be reproduced in the record in the exact words of the witnesses—the court being satisfied that such request is reasonable, and that the reproduction of said testimony in the exact words of the witnesses is necessary to a correct and complete understanding of the record.

This the 10 day of March A. D. 1924.

C. W. Sessions, Judge of the United States District Court for
the Western District of Michigan.

[fol. 1532] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION THAT CERTAIN EXHIBITS BE SENT TO THE SUPREME COURT OF THE UNITED STATES—Filed Mar. 10, 1924

Come now the appellants in the above entitled cause by their solicitors, Travis, Merrick, Warner & Johnson, and Newman, Poppenhusen, Stern & Johnston, and present their motion to the court and show that during the hearing of said cause several hundred exhibits were introduced in evidence; that it will be necessary that some of these exhibits be inspected by the Supreme Court of the United States; that in the preparation of the statement of evidence it was impossible, in a great number of instances, and impracticable in others, to state the substance of said exhibits or otherwise describe or summarize them so as to give the Judges of the Supreme Court an adequate idea thereof; that owing to the nature, number, form and multiplicity of said exhibits, as well as their diversity of size and the length of some of them, counsel for appellants and appellees [fol. 1533] have agreed that certain exhibits should be incorporated in the statement of evidence, either by stating the substance thereof or by means of copies thereof, and that this agreement has been executed; that counsel for appellants and appellees have agreed that it would be more practicable if all the other exhibits should be transmitted by the Clerk of this court to the Supreme Court of the United States, and that said counsel should thereafter enter into a stipulation with respect to the printing thereof; that the exhibits which have not been incorporated in the statement of evidence as above described are as follows:

Government Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 14A to 14 L inclusive, 15, 15A to 15-3F inclusive (with the exception of 15T, because through inadvertence of the Court Reporter there was no Gov. Ex. 15T), 17, 18, 18A to 18X inclusive, 19, 20, 20A, 21, 22, 23, 24, 24A to 24R inclusive, 25, 25A, 25B, 26, 27, 27A, 28, 28A, to 28T inclusive, 29, 29A, 29B, 29C, 30, 30A to 30F inclusive, 31, 31A to 31R inclusive, 32, 33, 34, 34A to 34P inclusive, 35, 36, 36A, 37, 38, 38A to 38K inclusive, 39 39A to 39D inclusive, 40, 40A to 40-5R inclusive, 41, 41A to 41-2Y inclusive, 42, 42A to 42C inclusive, extra 43 to extra 43F inclusive, 43A to 43-6 N inclusive, 44, 45, 46, 46A, 46B, 47, 48, 49, 50, 51, 51A to 51-2W inclusive, 52, 52A to 52-3G inclusive, 53, 53A, extra 54, 56, 56A to 56H inclusive, 57, 57A, 58, 58A, 59, 59A, 60 60A to 60P inclusive, 61, 61A, 62, 62A to 62N inclusive, 63, 63A to 63G inclusive, 64, 65, 65A to 65-3L inclusive, 66, 67, 68, 69, 70, 70½, 71, 72, 73, 74, 75, 76, 76A, 77, 78, 79, and Defendants' Exhibits A, B, B1, C to C11 inclusive (through inadvertence of the Court Reporter there was no Defendants' Exhibit D), E, F, F1, G, G1, H, H1, H2, I, J, K, L, P, Q, (through inadvert-

ence of the Court Reporter there was no Defendants' Exhibit S), T, T1, V4, V5, V6, V7, V24, W, Y, BB, BB1, CC½, CC, CC1, CC2, CC3, CC4, DD, DD1, EE, FF to FF9 inclusive, GG, HH, II1, II2, JJ, KK, KK1 to KK5 inclusive, LL, MM, NN, NN-1, OO, PP, QQ; Defendants' Keehn Exhibits Nos. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, (through inadvertence of the Court Reporter there was no Defendants' Keehn Exhibit 16), 17, 18, 19, 20, 21 and 22; Defendants' Robertson Exhibits 1 to 31 inclusive; Defendants' Bacon Exhibit 1; Defendants' Brown Exhibit 4; Defendants' Gordon Exhibits Nos. 1 to 16 inclusive; Defendants' Grant Keehn Exhibits Nos. 17 to 30 inclusive; Defendants' Vanderblue Exhibits Nos. 1 to 4 inclusive.

Wherefore, the appellants pray that this court enter an order that the exhibits above mentioned be certified by the Clerk of this court and transmitted by him to the Supreme Court of the United States, along with the transcript of the record herein.

This the 10 day of March, A. D. 1924.

Travis, Merrick, Warner & Johnson, Newman, Poppenhusen,
Stern & Johnson, Solicitors for Appellants.

[fol. 1535] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DIRECTING THAT CERTAIN EXHIBITS BE CERTIFIED BY THE
CLERK AND TRANSMITTED BY HIM TO THE SUPREME COURT OF
THE UNITED STATES

On motion of appellants made to this court and the consent of the appellee, It is hereby ordered that the following exhibits:

Government Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 14A to 14L inclusive, 15, 15A, to 15-3F inclusive (with the exception of 15T, because through inadvertence of the Court Reporter there was no Gov. Ex. 15T), 17, 18, 18A to 18X inclusive, 19, 20, 20A, 21, 22, 23, 24, 24A to 24R inclusive, 25, 25A, 25B, 26, 27, 27A, 28, 28A to 28T inclusive, 29, 29A, 29B, 29C, 30, 30A to 30F inclusive, 31, 31A to 31R inclusive, 32, 33, 34, 34A to 34P inclusive, 35, 36, 36A, 37, 38, 38A to 38K inclusive, 39, 39A to 39D inclusive, 40, 40A to 40-5R inclusive, 41, 41A to 41-2Y inclusive, 42, [fol. 1536] 42A to 42C inclusive, extra 43 to extra 43F inclusive, 43A to 43-6N inclusive, 44, 45, 46, 46A, 46B, 47, 48, 49, 50, 51, 51A to 51-2W inclusive, 52, 52A to 52-3G inclusive, 53, 53A, extra 54, 56, 56A to 56H inclusive, 57, 57A, 58, 58A, 59, 59A, 60, 60A to 60P inclusive, 61, 61A, 62, 62A to 62N inclusive, 63, 63A to 63G inclusive, 64, 65, 65A to 65-3L inclusive, 66, 67, 68, 69, 70, 70½, 71, 72, 73, 74, 75, 76, 76A, 77, 78, 79, and Defendants' Exhibits A, B, B1, C to C11 inclusive (through inadvertence of the Court Reporter there was no Defendants' Exhibit D), E, F, F1, G, G1, H,

H1, H2, I, J, K, L, P, Q, (through inadvertence of the Court Reporter there was no Defendants' Exhibit S), T, T1, V4, V5, V6, V7, V24, W, Y, BB, BB1, CC½, CC, CC1, CC2, CC3, CC4, DD, DD1, EE, FF, to FF9 inclusive, GG, HH, II1, II2, JJ, KK, KK1 to KK5 inclusive, LL, MM, NN, NN1, OO, PP, QQ; Defendants' Keehn Exhibits Nos. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, (through inadvertence of the Court Reporter there was no Defendants' Keehn Exhibit 16), 17, 18, 19, 20, 21 and 22; Defendants' Robertson Exhibits 1 to 31 inclusive; Defendants' Bacon Exhibit 1; Defendants' Brown Exhibit 4; Defendants' Gordon Exhibits Nos. 1 to 16 inclusive; Defendants' Grant Keehn Exhibits Nos. 17 to 30 inclusive; Defendants' Vanderblue Exhibits Nos. 1 to 4 inclusive, be certified by the Clerk of this Court and transmitted by him to the Supreme Court of the United States, this court being of opinion that said action is necessary for the due and proper presentation of the appeal herein to the Supreme Court of the United States and the expedition of said [fol. 1537] appeal.

This the 10 day of March, A. D. 1924.

— — —, Judge.

[fol. 1538] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, Charles J. Potter, Clerk of the United States District Court for the Western District of Michigan, do hereby certify that the within and foregoing are true and compared copies of all those parts of the files and records in the within entitled cause which are specified in the stipulation of counsel for the respective parties and therein directed to be included in the transcript on the appeal taken in said cause, including the original citation issued and filed in said cause.

Witness my hand and the seal of the said District Court, at the City of Grand Rapids, in said District and Division, this 20th day of March, in the year of our Lord one thousand nine hundred and twenty-four.

Charles J. Potter, Clerk, by Chas. L. Fitch, Deputy Clerk.

(Seal of the U. S. District Court, Western District of Mich., Southern Division.)

Proposed Statement of Evidence Lodged with me February 26, 1924.

Chas. L. Fitch, Deputy Clerk.

Endorsed on cover: File No. 30,230. W. Michigan D. C. U. S. Term No. 920. Maple Flooring Manufacturers Association, W. D. Young & Company, Mitchell Brothers Company, et al., appellants, vs. The United States of America. Filed March 28th, 1924. File No. 30,230.